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Wednesday
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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[INS No. 1933–98; AG Order No. 2282–99]

RIN 1115–AF10

Adjustment of Small Volume Application Fees of the Immigration Examinations Fee Account

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service's (Service) fee schedule of the Immigration Examinations Fee Account (IEFA) for certain small volume immigration adjudication and naturalization applications and petitions (Forms I–360, N–300, N–336, and N–470). Fees collected from persons filing these applications and petitions are deposited into the IEFA and used to fund the cost of processing immigration adjudication and naturalization applications and petitions and associated support services. The Service has determined that the current fees for these four small volume applications and petitions need to be adjusted. Of the four small volume applications and petitions, the fees for two are being increased and two are being decreased. This rule is necessary to ensure that the fees charged accurately reflect the cost of processing immigration adjudication and naturalization applications and petitions.

DATES: This final rule is effective January 14, 2000.

FOR FURTHER INFORMATION CONTACT: Paul Schlesinger, Branch Chief, Fee Policy and Rate Setting Branch, Office of Budget, Immigration and Naturalization Service, on (202) 616–2754, 425 I Street, NW., Room 6240, Washington, DC 20536. Detailed documentation of the rate-setting process is available upon request by calling (202) 616–2754.

SUPPLEMENTARY INFORMATION:

What Legal Authority Does the Service Have To Charge Fees?

1. Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Acts of 1989 and 1991

The Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, 1989 (Pub. L. 100–459), authorized the Service to prescribe and collect fees to recover the cost of providing certain immigration adjudication and naturalization services. Public Law 100–459 also authorized the establishment of the IEFA in the Treasury of the United States. All revenue from fees collected for the provision of immigration adjudication and naturalization services are deposited in the IEFA and ''remain available until expended to the Attorney General to reimburse any appropriation the amount paid out of such appropriation for expenses in providing immigration adjudication and naturalization services and the collection, safeguarding and accounting for fees * * *.'' 8 U.S.C. 1356(n).

In subsequent legislation, the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Acts, 1991 (Pub. L. 101–515), Congress further provided that ''fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.'' 8 U.S.C. 1356(m).

2. The Independent Offices Appropriation Act, 1952

The Service also employs the authority granted through the Independent Offices Appropriation Act, 1952 (IOAA), 31 U.S.C. 9701 (Pub. L. 82–137), commonly referred to as the ''user fee statute,'' to develop its fees. The user fee statute directs Federal agencies to identify services provided to unique segments of the population and to charge fees for those services, rather than supporting such services through general tax revenues. The IOAA states that ''[i]t is the sense of Congress that each service or thing of value provided by an agency * * * to a person * * * is to be self-sustaining to the extent possible.'' 31 U.S.C. 9701(a). The IOAA further provides that charges for such services or things of value should be based on ''the costs to the Government; the value of the service or thing to the recipient; the public policy or interest served; and other relevant facts.'' 31 U.S.C. 9701(b).

3. The Chief Financial Officers Act of 1990

The Service must also conform to the requirements of the Chief Financial Officers Act of 1990 (CFO Act), Pub. L. 101–576. Section 205(a)(8) of the CFO Act requires each agency's Chief Financial Officer to ''review, on a biennial basis, the fee, royalties, rents, and other charges imposed by the agency for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred by it in providing those services and things of value.'' 31 U.S.C. 902(a)(8).

Did the Service Publish a Proposed Rule To Adjust the Fees?

Yes. On May 17, 1999, the Service published a proposed rule in the **Federal Register** at 64 FR 26698, which proposed to adjust the fee schedule of the IEFA for certain small volume immigration adjudication and naturalization applications and petitions (Forms I–360, N–300, N–336, and N–470). The public was provided with a 60-day comment period which ended on July 16, 1999. The Service did not receive any comments on the proposed rule.

Accordingly, the fees for the following forms will be adjusted as follows:

Form	Old Fee	New Fee
I–360	$80.00	$110.00
N300	75.00	50.00
N–336	110.00	170.00
N–470	115.00	80.00

The following is a discussion of the standards and guidelines that were used to determine the fee adjustments.

What Federal Cost Accounting and Fee Setting Standards and Guidelines Were Used?

1. Office of Management and Budget (OMB) Circular No. A–25, User Charges

When developing fees for services, the Service adheres to the principles contained in OMB Circular Number A–25, User Charges. OMB Circular A–25 states that, as a general policy, a ''user charge * * * will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public.''

The guidance contained in OMB Circular A–25 is applicable to the extent that it is not inconsistent with any Federal statute. Specific legislative authority to charge fees for services takes precedence over OMB Circular A–25 when the statute expressly designates ''who pays the charge; how much is the charge; [or] where collections are deposited.'' When a statute does not address issues of how to calculate fees or what costs to include in the fee calculation, Federal agencies must follow the principles and guidance contained in OMB Circular A–25 to the fullest extent allowable. The guidance directs Federal agencies to charge the ''full cost'' of providing services when calculating fees that provide a specific benefit to recipients. OMB Circular A–25 defines full cost as ''all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service.'' These costs include, but are not limited to, an appropriate share of:

* Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement;

* Physical overhead, consulting, and other indirect costs including material and supply costs, utilities, insurance, travel and rents or imputed rents on land, buildings, and equipment;

* Management and supervisory costs; and

* The costs of enforcement, collection, research, establishment of standards, and regulation.

2. Federal Accounting Standards Advisory Board Statement of Federal Financial Accounting Standards No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government

When developing fees for services, the Service also adheres to the cost accounting concepts and standards recommended by the Federal Accounting Standards Advisory Board (FASAB). The FASAB was established in 1990, and its purpose is to recommend accounting standards for the Federal Government. In developing its recommendations, the FASAB considers the financial and budgetary information requirements of the Congress, executive agencies, and other users of Federal financial information.

How Did the Service Determine the Full Cost of Processing Immigration Adjudication and Naturalization Applications?

1. Phase I—Large Volume Applications/Petitions

The Service conducted a review of the IEFA in two phases to determine the full cost of processing immigration adjudication and naturalization applications. Phase I sought to develop a more consistent and reliable cost accounting methodology focusing on 30 large volume applications and petitions (volumes in excess of 10,000 per year). This resulted in a proposed rule, which detailed the Activity Based Costing (ABC) approach and methodology used, and proposed adjusted fees for 30 immigration adjudication and naturalization petitions based on the determination of the full cost to the Service to perform the required activities. The proposed rule was published in the **Federal Register** on January 12, 1998, at 63 FR 1775. The final rule was published in the **Federal Register** on August 14, 1998, at 63 FR 43604.

2. Phase II—Small Volume Applications/Petitions

In a continuing effort to refine and build upon the methodology and results of the first study, the Service implemented Phase II of the IEFA fee study. The primary objective was to add more precision to the cost model for certain small volume applications. For the purposes of the IEFA studies, small volume applications were defined as those applications and petitions that have annual volumes of less than 10,000 application and petition receipts. The Service selected the ABC approach because it is an operationally-based technique that focuses on work activities performed that produce an output and consume resources. Table 1 provides the small volume applications that are the subject of this final rule.

TABLE 1.—SMALL VOLUME APPLICATIONS

Form	Description
I–360 ...	Petition for Amerasian, Widow(er), or Special Immigrant.
N–300 ..	Application to File Declaration of Intention.
N–336 ..	Request for Hearing on a Decision in Naturalization Procedures.
N–470 ..	Application to Preserve Residence for Naturalization Purposes.

What Processes Were Used To Determine the Adjustment of Fees?

1. Scope of Small Volume Application Review

One of the primary objectives of the IEFA Study was to evaluate the small volume applications and include the applications in the IEFA cost model. The small volume application evaluation and analysis included: (1) Incorporating small volume application expenses deducted from the IEFA budget base; and (2) assigning activity processing model activities to the small volume applications.

2. Small Volume Applications Resources

Because small volume applications were not included in the Phase I IEFA Study, amounts representing the imputed cost of the small volume applications were deducted from the budget base. For the purposes of the Phase I IEFA Study, it was assumed that the cost of processing a small volume application was equal to the fee in effect at the time. As a result, the small volume application fees were multiplied by the projected FY 1998 small volume application workload volume to identify the projected revenue to deduct from the budget base. Table 2 provides the small volume application resources deducted from the Phase I IEFA Study cost model.

TABLE 2.—SMALL VOLUME APPLICATION RESOURCES DEDUCTED FROM THE PHASE I IEFA COST MODEL

Form number	Phase I projected FY 1998 volume	Current fee	Projected resources
I–360	8,196	$80.00	$655,680
N–300	991	75.00	74,325
N–336	3,956	110.00	435,160
N–470	423	115.00	48,645
Total of small volume applications			1,213,810

The $1.2 million in projected resources for processing small volume applications was deducted from the budget base of each IEFA funded program involved in processing these applications. The amount deducted from each program was based on the percentage of full time equivalents (FTEs) represented by the program in proportion to the total FTEs of the programs combined. The inclusion of small volume applications in the Phase II IEFA Study required assigning resources to the program areas.

After the small volume application resources were assigned to the respective program areas, the resources were assigned to the Application Processing Model (APM) activities based on the results of the Phase I IEFA Study FTE surveys for each program area. The APM is a narrative and graphical representation (i.e., a map or flowchart of the activities, worksteps, or tasks) of an application process. The APM was developed to show the activities involved in processing applications and to serve as the primary basis for associating resources with cost objects (applications). The APM enabled the study team to link the resources required by the Service to perform its processing activities with the applications.

3. Assigning Activities to Small Volume Applications

With the small volume expenses included in the Phase II cost model, the next step was to assign the activities to these applications. Small volume applications are processed in the same manner as other IEFA funded applications. Therefore, the activities identified in the Phase I IEFA Study APM were used to evaluate the small volume applications. To ensure consistency with the Phase I study, the same methodology and approach was used to assign activities to applications.

In the Phase I study, the nine primary activities were assigned to the immigration adjudication and naturalization applications and petitions based on the percentage of projected workload volume for the application or petition. These assignments were then weighted by the time required to perform each activity (cycle time) for each application or petition. The percentage of weighted volume represented by an application determines the percentage of activity cost assigned to the application. Including the small volume applications in the Phase II IEFA cost model required identifying the FY 1998 workload projections, and determining the time required to perform each small volume application activity. Once these data elements were identified, the percentage of activity costs applicable to the small volume applications was calculated.

4. Small Volume Applications

The first step in assigning the APM activities to small volume applications was to identify the projected FY 1998 workload volumes for the applications. The volumes in Table 3 represent the most recent workload projections developed by the Service and used in the fee study.

TABLE 3.—PROJECTED ANNUAL APPLICATION WORKLOAD VOLUMES

Small volume form	Description	Phase II projected annual volume
I–360	Petition for Amerasian, Widow(er), or Special Immigrant	8,919
N–300	Application to File Declaration of Intention	1,015
N–336	Request for Hearing on a Decision in Naturalization Procedures	4,500
N–470	Application to Preserve Residence for Naturalization Purpose	382

5. Small Volume Application Data Gathering Approach

Once the small volume application business volumes were identified, the next step was to determine the activity cycle times for each application. In the Phase I IEFA Study, applications and petitions activity cycle times were identified by performing statistical sampling and observation at various service centers and district offices. The Phase I study cycle time collection relied on observing enough application activity combinations to ensure statistical validity.

Small volume applications by definition are not processed in the same volume as other IEFA applications. The service centers and district offices do not process enough small volume applications to ensure that personal observations could be performed during site visits. As a result, the Phase II study determined that observing enough small volume application and activity combinations to ensure statistical validity could not be performed in a timely or cost effective manner.

The study determined that the best approach to identify small volume application activity cycle times would be to conduct telephone interviews with highly experienced Service personnel involved in processing small volume applications. The highly experienced Service personnel identified were from different geographical locations. The objective of each telephone interview was to identify the activities and tasks

required to process each small volume application and to identify the estimated time required to perform the activity or task.

6. Telephone Interview Preparation

Prior to conducting each telephone interview, procedures were developed for conducting the interview. The following steps were performed prior to the interview:

Step 1. In this step, the contact person was provided with a description of the fee study and the APM definitions, and asked to review the APM, identifying the areas of the APM that applied to their application. The contact person was requested to identify any questions they had on the activities and tasks listed on the APM.

Step 2. This step consisted of a discussion, after the initial review by the contact person, of any questions that he/she had on the APM. It was important that the contact person and the interviewer have the same understanding of the APM prior to asking timing questions. The contact person was asked to determine if there were any activities or tasks for the application not listed in the APM.

Step 3. Preparation for this step involved a discussion of the application processing activities, including the ''unique'' and ''common'' activities. A determination was made on whether the small volume application was processed the same as other applications for ''common'' activities. It was made clear that the interviewee had to understand the terms ''unique'' and ''common'' before discussing application cycle times.

Step 4. This phase involved determining whether an activity was ''unique,'' and making a listing of all tasks the contact person completes in the processing of the application. If the contact person does not list a particular task under an activity, the person must ascertain whether the task is either not done for that activity, or processed by another person. If processed by another person, a contact person was obtained for that particular activity.

Step 5. This step was performed after the first four initial steps and involved the timing interview, which consisted of the following steps:

(1) For each task listed, ask the contact person how long it takes on average to complete the task;

(2) Ask the contact person how long they have worked for the Service, and how much experience the contact person has with his or her application;

(3) Determine when the contact person last worked on adjudicating the application;

(4) Ask the contact person if there are any circumstances that would make processing of the application different at other Service offices;

(5) Determine the volume of applications processed at the contact person's location; and

(6) Determine if the contact person is aware of any changes to the form that may affect its processing time.

7. Cycle Time Collection

After the telephone interview procedures were conducted, the Service collected cycle time estimates from the small volume application interviewees. Cycle time estimates were provided by the interviewee for each ''unique'' task performed in processing the small volume application. The interviewee also identified each ''common'' task performed in processing the small volume application. Common activity and task cycle times were collected in the Phase I IEFA Study, and represent the time required to perform an activity or task regardless of the type of application. For example, opening the mail is one of the tasks performed within the common activity ''Receive Application or Petition.'' The activity and task are common because they require the same amount of time to perform regardless of the type of application in the envelope.

The results of the telephone interviews were compiled to determine the cycle time required to perform each activity and task for an application. Each small volume application cycle time estimate identified in the telephone interview was weighted by the volume of the application processed at the location of the interviewee. As a result, the response of interviewees at locations processing higher quantities of an application were weighted more than the results from locations that process fewer volumes. The weighted cycle times for each location were then summed and divided by the total applications processed at all locations. The result was the normalized cycle time to perform each small volume activity.

In addition to performing interviews, the study team collected Form I–360 adjudication cycle times at the Nebraska Service Center (NSC). The study team collected cycle times by making personal observations of the time required to adjudicate the Form I–360. These procedures consisted of the following data collection assumptions:

(1) Selection of persons to be observed would be on a random basis;

(2) All applications received by the Service are in random order, therefore, the observation of applications processing on a first-in, first-out basis would maintain this randomness;

(3) Site visit team members would not be restricted in their observations by site personnel; and

(4) All site visit team members would have similar equipment and training.

The Form I–360 adjudication cycle times were weighted by the volume of the applications processed at the NSC. These results were combined with the Vermont Service Center Form I–360 telephone interview estimates to determine the cycle time to process each activity and task for the Form I–360. The cycle time estimates to perform each small volume application activity in minutes and fractions are provided in Table 4.

TABLE 4.—SMALL VOLUME APPLICATION CYCLE TIMES (MINUTES)

Activity	I–360	N–300	N–336	N–470
Receive	4.71	2.24	.89	.89
Record Fee	1.40	1.40	1.40	1.40
Input Application Data	4.68	.95	N/A	N/A
Manage Records	5.65	13.93	6.02	5.57
Adjudicate Applications	49.06	7.90	77.48	26.16
Prepare Outgoing	1.67	.65	1.83	3.35
Issue End Product	N/A	9.25	7.42	N/A
Respond to Inquiry	7.68	N/A	2.73	9.87
Total	74.85	36.32	97.77	47.24

8. Small Volume Application Costs

The final step in performing the small volume application analysis was to calculate the cost to process each application. With the APM activities assigned to small volume applications based on projected FY 1998 workload volumes weighted by application activity cycle times, the study team determined the total annual cost to process each small volume application. The total small volume application activity costs were divided by the projected FY 1998 workload volumes to determine a unit cost for each small volume application activity. The sum of the small volume application activity costs is the total unit cost to process the small volume application. (The unit cost per application identifies the cost required to produce one unit, e.g., one application, based on the activities consumed in producing that unit/application). Table 5 provides the FY 1998 activity unit cost and total unit cost to process each small volume application.

TABLE 5.—SMALL VOLUME APPLICATION FY 1998 UNIT COSTS

Activity	I–360	N–300	N–336	N–470
Receive	$3.78	$1.10	$.44	$.44
Record Fee	1.66	1.66	1.66	1.66
Input Application Data	7.00	1.02	.00	.....
Manage Records	6.78	20.42	8.83	8.17
Adjudicate Applications	75.34	14.02	137.50	46.42
Prepare Outgoing	4.35	1.61	4.54	8.31
Issue End Product	.00	10.94	12.40	.00
Respond to Inquiry	10.95	.00	3.89	14.07
Total FY 1998 Unit Cost	109.86	50.77	169.26	79.07

The Service is authorized to set the immigration and naturalization fees at a level that will recover the costs of providing all immigration adjudication and naturalization services ''including the costs of similar services provided without charge to asylum applicants or other immigrants.'' 8 U.S.C. 1356(m). In addition, the fees must be set sufficiently high enough to recover the costs of fee waivers that are granted. However, because of the small volume associated with these applications, the amount derived from the calculation to determine waiver/exempt costs and the asylum and refugee surcharge was so insignificant that it has not been included as part of the costs for these applications.

What Are Our Conclusions and Fee Adjustments?

The objectives of the small volume application analysis were to determine the full cost of processing the applications and to include the applications in the IEFA cost model. The small volume application analysis was performed in accordance with the methodology implemented in the Phase I IEFA Study. The analysis required incorporating small volume application revenues into the IEFA cost model that were deducted during the Phase I IEFA Study, and identifying and quantifying drivers to assign the APM activities to the small volume applications. The unit costs identified in Table 5 represent the Service's cost to process each small volume application.

The Service is increasing two and decreasing two of the small volume fees associated with this study. Table 6 identifies the fees to be increased as well as the fees to be decreased. The fee has been rounded to the nearest whole $5 amount.

TABLE 6.—SMALL VOLUME APPLICATION FEE SCHEDULE ADJUSTMENTS

Form	Description	Total cost	Current fee	Proposed fee
I–360	Petition for Amerasian, Widow(er), or Special Immigrant	$109.86	$80.00	$110.00
N–300	Application to File Declaration of Intention	50.77	75.00	50.00
N–336	Request for Hearing on a Decision in Naturalization Procedures	169.26	110.00	170.00
N–470	Application to Preserve Residence for Naturalization Purposes	79.07	115.00	80.00

Regulatory Flexibility Act

The Attorney General, in accordance with 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. Of the four applications or petitions covered under this rule, only two of the fees are being increased and the other two fees are being decreased. In addition, small volume applications refer to fewer than 10,000 applications per year. Total projected revenues for all four applications or petitions for FY 1998 amounts to $1,827,400. Normally, these applications and petitions would generally be filed by individuals as opposed to small businesses.

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, or $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. This rule will only affect persons who file certain applications or petitions for immigration benefits. 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 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million 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.

Executive Order 12866

This rule is not considered by the Department of Justice to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, because it will have an annual effect on the economy of less than $100 million. Without the increases/decreases, the Service estimates that it will collect $1.3 million in fees for immigration and adjudication services for these four small volume applications in FY 1998. With the fee adjustments, the Service will collect approximately $1.8 million. The implementation of this rule will provide the Service with an additional $.5 million in revenue over the revenue that would be collected under the old fee structure. This revenue increase is a recovery of costs based on workload volumes required to process these applications.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988: Civil Justice Reform

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

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Fees, Forms, Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

Accordingly, part 103 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

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

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

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p.166; 8 CFR part 2.

2. In § 103.7, paragraph (b)(1) is amended by revising the entries for the following forms, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

Form I–360. For filing a petition for an Amerasian, Widow(er), or Special Immigrant—$110.00, except there is no fee for a petition seeking classification as an Amerasian.

* * * * *

Form N–300. For filing an application for declaration of intention—$50.00.

Form N–336. For filing a request for hearing on a decision in naturalization proceedings under section 336 of the Act—$170.00.

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Form N–470. For filing an application for section 316(b) or 317 of the Act benefits—$80.00.

* * * * *

Dated: December 8, 1999.

Janet Reno,

Attorney General.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 660

[Docket No. 990430115–9314–02; I.D. 030299B]

RIN 0648–AL48

Fisheries Off West Coast States and in the Western Pacific; Northern Anchovy/Coastal Pelagic Species Fishery; Amendment 8

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Amendment 8 to the Northern Anchovy Fishery Management Plan. This rule removes jack mackerel north of 39° N. lat. from the Pacific Coast Groundfish Fishery Management Plan and adds four species to the management unit of the Coastal Pelagic Species (CPS) (formerly the Northern Anchovy Fishery Management Plan (FMP)); defines a new fishery management area and divides it into a limited entry zone and two new subareas; establishes a procedure for setting annual specifications including harvest guidelines and quotas; provides for closure of the directed fishery when the directed portion of a harvest guideline or quota is taken; identifies fishing seasons for Pacific sardine and Pacific mackerel; establishes catch restrictions in the limited entry zone and, when the directed fishery for a CPS is closed, limits harvest of that species to an incidental limit set by the Southwest Regional Administrator, NMFS, (Regional Administrator); implements a limited entry program; authorizes the Regional Administrator to issue exempted fishing permits for the harvest of CPS that otherwise would be prohibited; and establishes a framework process by which management decisions could be made without amending the FMP. No regulations are required at this time to implement the overfishing definitions and designation of essential fish habitat (EFH).

The intent of this action is to implement the provisions of Amendment 8 to the Northern Anchovy Fishery Management Plan, which will prevent overfishing, maximize yield from available resources, and control increasing harvesting capacity off the Pacific coast.

DATES: Effective January 14, 2000, except for § 660.502 and § 660.512 which are effective December 15, 1999, and §§ 660.505(a),(b),(g), and 660.511 which are effective January 1, 2000.

ADDRESSES: Copies of Amendment 8, which includes the final supplemental environmental impact statement (FSEIS)/regulatory impact review may be obtained from Larry Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, Oregon, 97201. Comments regarding the reporting burden estimate or any other aspect of the collection-of-information requirements contained in this rule should be sent to Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: James Morgan, Sustainable Fisheries Division, NMFS, at 562–980–4030.

SUPPLEMENTARY INFORMATION: The Pacific Fishery Management Council (Council) submitted Amendment 8 for Secretarial review by a letter dated December 11, 1998. On March 12, 1999,

a notice of availability of the FSEIS for Amendment 8 was published in the **Federal Register** (64 FR 12279). The proposed rule was published on May 25, 1999 (64 FR 28143). The comment period on the FSEIS ended on May 11, 1999. The comment period on the proposed rule ended on July 9, 1999.

On June 10, 1999, the Secretary of Commerce partially approved Amendment 8. Optimum yield (OY) for squid was disapproved because the amendment did not provide an estimate of maximum sustainable yield (MSY), the theoretical concept on which OY and overfishing are based under the Magnuson-Stevens Act. The bycatch provisions were disapproved because Amendment 8 did not contain a standardized reporting methodology to assess the amount and type of bycatch in the fishery and because there is no explanation of whether additional management measures to minimize bycatch and the mortality of unavoidable bycatch are practicable at this time. The Council has directed its CPS Management Team (Management Team) and its CPS Advisory Subpanel (Advisory Subpanel) to begin working to resolve these two issues. All other elements of Amendment 8 were approved.

The requirements of the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act, such as defining OY, overfishing, levels at which managed stocks are considered overfished, EFH, and social and economic data on fishing communities were discussed in the preamble to the proposed rule and are not repeated here.

Species in the FMP

Amendment 8 and this final rule place Pacific mackerel (*Scomber japonicus*), Pacific sardine (*Sardinops sagax*), jack mackerel (*Trachurus symmetricus*), and market squid (*Loligo opalescens*) in a management unit with northern anchovy (*Engraulis mordax*). All CPS are harvested by a fleet of vessels using mainly roundhaul nets (e.g., purse seines). Managed species are divided into two categories: ''Actively managed'' and ''monitored''. Actively managed species are subject to annual harvest limits based on current biomass estimates. There are no mandatory harvest limits for monitored species; however, other management measures, such as area closures, could apply to monitored species. Amendment 8 sets the allowable biological catch (ABC) levels for monitored species well below estimates of MSY to obviate the need for detailed resource assessments until the domestic fishery necessitates active management of these species. Initially, Pacific sardine and Pacific mackerel are designated as actively managed species, while jack mackerel, northern anchovy, and market squid are monitored species.

In Amendment 11 to the Pacific Groundfish Fishery Management Plan, jack mackerel was removed from that fishery management plan, effective upon implementation of Amendment 8 to the Northern Anchovy Fishery Management Plan.

Fishery Management Areas and Subareas

The fishery management area is the exclusive economic zone (EEZ) off the coasts of Washington, Oregon, and California between 3 and 200 nautical miles offshore, bounded in the north by the Provisional International Boundary between the United States and Canada, and bounded in the south by the International Boundary between the United States and Mexico. The fishery management area is divided into subareas for the regulation of fishing for CPS, with the following boundaries: The CPS Limited Entry Zone covers that portion of the EEZ between 39°00'00'' N. lat. (off California) and the U.S. Mexico-International Boundary; Subarea A covers that portion of the EEZ between the U.S.-Canada Provisional International Boundary and Pt. Piedras Blancas, California (35°40'00'' N. lat.); Subarea B covers that portion of the EEZ between Pt. Piedras Blancas, California, and the U.S.-Mexico International Boundary.

Limited Entry System

A limited entry system is established in the commercial fishery for CPS finfish (squid is not included) south of 39° N. lat. (Pt. Arena, California). Open access will continue north of 39° N. lat. Historically, 99 percent of the sardine resource has been harvested south of Pt. Arena. When abundance is high, fishermen without limited entry permits who are active in more northern areas can benefit from the high abundance by fishing in the open access fishery. When abundance declines, the resource tends to disappear from the north and moves south.

To qualify for a limited entry permit, a vessel must have landed at least 100 metric tons (mt) of CPS finfish from January 1, 1993, through November 5, 1997. The number of vessels qualified for a limited entry permit is estimated to be 70. These vessels have been responsible for approximately 99 percent of the harvest of CPS finfish during the window period.

The limited entry program takes effect on January 1, 2000; that is, fishermen harvesting CPS finfish south of 39° N. lat. must have a limited entry permit on board their vessels at that time. Applicants for permits should obtain the required forms as soon as possible so that delays in obtaining the required permit can be avoided. The forms can be obtained by writing the Regional Administrator (See **ADDRESSES**), by calling the Sustainable Fisheries Division (See **FOR FURTHER INFORMATION CONTACT**), or by downloading the application from the Southwest Region Web Site at *http://swr.ucsd.edu*. Permits will be issued to the owner of the qualifying vessel and can only be transferred once during the year 2000. This one-time transfer affords the owner of a qualifying vessel the opportunity to upgrade his/her vessel or to replace an aging vessel, and it also allows those who wish to enter the fishery a 1-year opportunity to buy a permit. After the year 2000, a permit cannot be transferred to another person. A permit can only be registered for use with another vessel if the permitted vessel has been lost, stolen, or scrapped, or has been removed from all federally managed fisheries.

Vessels fishing CPS finfish in the limited entry fishery may land no more than 125 mt of CPS from any fishing trip. This limit was designed to curtail increases in harvest capacity.

Many vessels have landed small amounts of CPS for dead bait or for small specialty markets in the past and would not qualify for a limited entry permit. Under the framework provisions of Amendment 8, the Council can recommend that vessels without a permit be allowed to make CPS finfish landings up to a specified amount between 1 and 5 mt under the so-called ''exempted trip limit.'' The final rule initially sets the exempted trip limit at 5 mt. Any change in the exempted trip limit will be implemented through rulemaking. Additionally, all vessels harvesting CPS finfish for live bait are exempt from the limited entry permit provisions.

Framework Process

This rule establishes a framework process to set and adjust fishery specifications and management measures in accordance with procedures and standards described in section 2 of Amendment 8. The framework process consists of two procedural categories: the point-of-concern framework procedure and the socio-economic framework procedure, according to which the Council may recommend and NMFS may approve the establishment and adjustment of management measures. The point-of-concern framework procedure would be

used in response to resource conservation and ecological issues, while the socio-economic framework procedure would be used to address socio-economic issues in the fishery. Under both of these procedures, the Council and NMFS may carry out four types of actions: (1) Automatic actions for non-discretionary actions, which will become effective upon publication of a **Federal Register** notice without prior public notice and opportunity for comment and without a prior Council meeting; (2) notice actions, which will be used for all management actions, except automatic actions, intended to have temporary affect that are either non-discretionary or have probable impacts that were previously analyzed and which will require at least one Council meeting and publication of one **Federal Register** notice; (3) abbreviated rulemakings, which will be used for all discretionary management actions intended to have permanent effect, the impacts of which have not been previously analyzed, and which will require at least one Council meeting and publication of one rule in the **Federal Register**; and (4) full rulemaking actions, which will require at least two Council meetings and publication of proposed and final rules in the **Federal Register** with an opportunity for public comment.

Under the framework system, many different types of actions could be taken to respond quickly to changes in the fishery. For example, actively managed and monitored species could be moved between categories as circumstances require. Other actions include trip frequency limits, area or subarea closures, seasons, size limits, gear limitations, and other appropriate measures. Amendment 8 and this final rule authorize the Council to designate certain management measures as ''routine management measures.'' This designation will enable the Council to modify the measure through the single meeting notice procedure described above.

Harvest Guidelines

The Regional Administrator will calculate the annual harvest guidelines for actively managed CPS based on the estimated biomass, formulas, and the standards set in the FMP. Harvest guidelines for CPS will be calculated using the current biomass estimate multiplied by a fixed harvest rate. The portion of the resource in U.S. waters may change from year to year; the harvest guidelines will be calculated using the best estimate available. The amount of the harvest guideline needed for incidental trip limits when the fishery is nearing closure may vary depending on when the harvest guideline is projected to be achieved, but the sum of the incidental amount and the amount harvested directly must equal the total harvest guideline.

Following the determination of the estimated biomass, the Management Team and Advisory Subpanel will review the biomass estimate and resulting harvest guideline during a public meeting. Public comments and comments of the Advisory Subpanel will be reported to the Council. After hearing public comments, the Council will either adopt the harvest guideline for the upcoming fishing season or recommend a different harvest guideline, accompanied by a justification for the recommendation. Although there is little flexibility in setting harvest guidelines, errors in calculations and in the way the specific factors were used in determining the biomass are elements that could be examined.

The annual process for calculating harvest guidelines will include public review of the estimated biomass and harvest guidelines before the fishing season begins; however, the Regional Administrator may announce the harvest guideline in the **Federal Register** before the process is completed to help fishermen plan their activities and begin harvesting when the fishing season begins.

Fishing Seasons

This rule sets the Pacific sardine season at January 1 to December 31, or until closed, and the Pacific mackerel season at July 1 to June 30, or until closed. At this time, the California Department of Fish and Game is managing these two species. The Council's Management Team and Advisory Subpanel will meet to review the status of these two resources so that NMFS harvest guidelines can be implemented beginning on January 1, 2000.

This rule supercedes the existing harvest limits for northern anchovy, published in the **Federal Register** on September 2, 1999 (64 FR 48113). Those interim final quotas were issued under regulations that were in effect before this final rule was promulgated.

Comments and Responses

Eleven letters on Amendment 8 and the proposed rule were received from the fishing industry. Most did not believe that there was justification for implementing limited entry in the CPS fishery. Comments are grouped together here, followed by NMFS' responses.

Comment 1: Members of the Advisory Subpanel made decisions about limiting the number of vessels to serve their own interests. As a result, the fleet is too small to harvest the resource available.

Response: The Planning Team recommended a fleet smaller than that preferred by the Advisory Subpanel, pointing out that a smaller fleet was capable of harvesting the MSY of all CPS finfish. The Council recommended a larger fleet after hearing testimony from the Planning Team, Advisory Subpanel, and from processors, who believed that the Planning Team's recommendation for a smaller fleet would not provide a sufficient number of vessels in a situation when a processor needed a supply of one species at a time when most vessels might prefer harvesting a higher valued species. The limited entry fleet established by Amendment 8 is expected to meet the needs of the fishing industry and be capable of harvesting all CPS finfish that are likely to be available.

Comment 2: Limiting the number of vessels is unnecessary. The fleet failed to harvest the sardine quota in 1998 and will not harvest the quota in 1999 because the demand for sardine is limited. If limited entry is needed in the future, the framework process could be used to implement it.

Response: Enough capacity is believed to exist to harvest the MSY of all finfish managed by the FMP. If experience shows that there are not enough vessels, the entry of additional vessels could be allowed using the framework process. However, experience in other fisheries shows that allowing a fleet to grow uncontrollably leads to a larger fleet than necessary, and removing excess capacity is often difficult and costly.

Comment 3: Trip limits are inefficient because restricting vessels to a certain tonnage each day increases costs.

Response: The trip limit in the limited entry fishery is a limitation on the number of metric tons per trip (initially set at 125 mt/trip), not per day. No vessel initially permitted in the fishery is expected to be capable of landing 125 metric tons. Therefore, the initial trip limit is not expected to impose inefficiencies on the fishery. As many trips as necessary can be completed to satisfy processors' needs. Trip limits as used in the coastal pelagics fishery are different from those in other fisheries. The trip limit was imposed to avoid rapid expansion of the fleet, not to spread the harvest over the year or to limit the capabilities of the existing fleet.

Comment 4: Amendment 8 does not assess the capacity that U.S. processors can, or the extent that U.S. processors will, process the OY of coastal pelagic species.

Response: The recent increase in abundance of Pacific sardine has been dramatic. In response to the increase, new processing capacity has been added in southern and central California, and there is an active search by processors for additional markets. Processing capacity is expected to rise and fall with available market demand. Nevertheless, a better idea of how much fish will be processed by domestic processors will be gained from experience as processors adapt to market conditions. At this time, there appears to be enough potential processing capacity to satisfy available markets.

Comment 5: The limited entry system allocates fishing privileges unnecessarily and in a manner that is unfair to existing fishermen. A combination of squid and finfish landings as qualifying criteria would be more equitable.

Response: Vessels that primarily land squid qualify for a limited entry permit if at least 100 mt of CPS finfish was landed during the window period (average of 20 mt/year). Using squid as a qualifying species was an option in Amendment 8, but was not adopted because the fleet would have included many vessels that landed no CPS finfish. The result would have been a much larger fleet with vessels that have never landed CPS finfish receiving a permit that applies only to finfish while some vessels that actually targeted CPS finfish would have been eliminated from the fishery.

Comment 6: Amendment 8 does not, as required by Section 303(a)(4)(A) of the Magnuson-Stevens Act, assess and specify the capacity and the extent to which fishing vessels of the United States, on an annual basis will harvest the OY of CPS finfish. Amendment 8 focuses on the number of vessels rather than the capacity of vessels.

The importance of carrying capacity is apparent if one looks at the practices of the Inter-American Tropical Tuna Commission (IATTC), which tracks closely the capacity of individual vessels in the various tuna fleets as well as the harvesting rates of individual vessels.

Response: The harvesting capacity of the fleet was assessed in Amendment 8 by examining a combination of what vessels can physically hold and how many trips they can make during the year. Assuming a modest harvest rate by existing vessels, the MSY of finfish likely to be available could be harvested in a 6-month season. The underlying purpose of determining domestic capacity is to make fishery resources available to U.S. fishermen before making them available to foreign fishermen. The capacity of each individual vessel does not need to be determined to meet the requirements of the Magnuson-Stevens Act.

The IATTC keeps rigorous records of hold capacity of individual vessels. In the tuna fishery, however, a substantial amount of harvested fish is at sea at any particular moment. To determine when quotas will be reached, the IATTC needs to know how much fish individual vessels hold and how much fish a vessel can harvest each day. To manage quotas on coastal pelagic species, all that needs to be known is how much is landed. The IATTC could not manage tuna based only on landings.

Comment 7: Amendment 8 violated procedural safeguards of the Magnuson-Stevens Act with regard to public review and analysis of the provisions that severely curtail the transferability of permits after the year 2000.

Response: Non-transferable permits were an option in Amendment 8 through several drafts of the sections on limited entry and was available for public review and comment. The option was included in the draft amendment dated August 1998, and the option was available for public review and comment at the public hearings chaired by the Council. The provisions have been implemented by notice-and-comment rulemaking under the Administrative Procedure Act.

Comment 8: Amendment 8 shows that the annual number of roundhaul vessels that have landed CPS during 1981–1997 has changed substantially from year to year. Since the vessels are not listed by official number and name, the variation may be due to duplication.

Response: To determine potential fleet size, the Planning Team used data from the Pacific Fishery Information Network. When vessels landed catch at more than one port, the port of landing was taken to be where most of the landings were made. Effort was taken to minimize the possibility of duplication.

Comment 9: Amendment 8 takes an overly optimistic view of the harvesting capacity of the coastal pelagics fleet. Historical records do not show such high harvests. There are no data to support the high harvests needed per vessel to land more than 400,000 mt in a 6-month period.

Response: As stated in comment 6, the estimate of a 6-month season to harvest the MSY of all species likely to be available may be inexact. Nevertheless, the goal of Amendment 8 is not to achieve the number of vessels that will be needed to harvest the full quotas for coastal pelagic species during years of particularly high stock abundance. The goal of limited entry is to ensure that there is no more capital invested in the fishery than necessary. As stated in the amendment, wide variability in the coastal pelagic resources is inevitable. Presently, northern anchovy is at relatively low biomass levels and has a limited market. The sardine resource is increasing, but demand has not increased as rapidly as the resource. The Pacific mackerel quota is larger in 1999 than in recent years, but it is uncertain whether the full market potential will be realized. Amendment 8 concludes that about 70 vessels will be sufficient to meet the varied objectives of the FMP.

In addition to the harvesting that occurs in the limited entry fishery, when one or more resources exhibit large abundance, any vessel may harvest north of 39° N. lat. without a limited entry permit. If OY is not being taken because of overly restrictive management, the Council and NMFS will adjust the system as appropriate.

Comment 10: The Council did not take into account the present participation and importance of the CPS finfish fishery as it affects the commercial fishing community in San Diego County.

Response: Amendment 8 establishes liberal qualifying criteria that will make it unlikely that vessels dependent on CPS finfish will be excluded from the fishery. The Magnuson-Stevens Act requires that each plan or amendment include a fishery impact statement that assesses the effects, if any, of the conservation and management measures on participants in the fisheries and on fishing communities. Although the analysis may not have addressed all of the particular impacts of Amendment 8 on a specific fishing community such as the commercial fishing community in San Diego County, the limited entry scheme, besides preventing overcapitalization, is designed to protect historic participation in the fishery while providing maximum benefits to all users. Provisions for small and incidental harvesters to maintain their catches prevent individuals from being penalized or from being excluded from the fishery. Although CPS finfish are commonly low-valued species, when the abundance of CPS finfish is large and market conditions make harvesting feasible, any harvester that has landed minimal or no CPS finfish may gain benefits from the fishery by participating in the open access fishery north of 39° N. lat.

Comment 11: The provision to allow only 1 year to upgrade a vessel is too restrictive. The restriction on transfers combined with the trip limit is extremely inefficient.

Response: Amendment 8 does not restrict improvements to existing vessels; it strictly limits registering a limited entry permit with an entirely different vessel. This rule does not restrict a fisherman's choice to increase horsepower, install a refrigeration system, enlarge hold capacity, or make any other changes to improve an existing vessel. By implementing a trip limit and regulating transfers to control expansion of the fleet, NMFS avoided a complicated system of regulations governing horsepower, vessel length, and hold capacity. Any potential inefficiencies created by the limited entry program are expected to be outweighed by controlling increases in harvesting capacity.

NMFS Action

The administrative procedures needed to implement a limited entry permit system are being made effective upon the date of publication in the **Federal Register** of the final rule. The effectiveness of the substantive measures of Amendment 8 is being delayed until January 1, 2000.

NOAA codifies its OMB control numbers for information collection at 15 CFR part 902. Part 902 collects and displays the control numbers assigned to information collection requirements of NOAA by OMB pursuant to the Paperwork Reduction Act (PRA). This final rule codifies OMB control number 0648–0204 for § 660.512.

Under NOAA Administrative Order 205–11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

Changes to the Proposed Rule

NMFS has made a number of changes to the proposed rule. In section 660.502, the phrase ''as used in this subpart'' has been removed from the definitions for ''owner'' and ''person.'' Also, a definition of ''prohibited'' ''species'' has been added for clarity. Section 660.505(f) has been revised to indicate that when fishing for CPS, it is unlawful for any individual to fail to return a prohibited species to the sea immediately with a minimum of harm. This section has also been revised to make it consistent with the language in section 660.511(e) regarding the immediate release of prohibited species. Section 660.506 has been revised to indicate that the only gear authorized for use in the reduction fishery for northern anchovy off California is round haul nets that have a minimum wet-stretch mesh size of 10/16 of an inch (1.59 cm) excluding the bag portion of a purse seine. Also, the last sentence that discusses other gear used in the CPS fisheries has been deleted. Section 660.512(b) has been revised to indicate that a limited entry permit for a vessel will be issued only if that vessel landed 100 mt of CPS finfish from January 1, 1993, through November 5, 1999. Section 660.512(c) has been revised to indicate that a vessel owner applying for issuance, renewal, transfer, or registration of a limited entry permit must prove that the qualification requirements are met by submitting the specified documentation. Section 660.512(g) regarding the process for appealing the initial issuance of a permit has been revised to indicate that the Sustainable Fisheries Division issues the permit and not the Regional Administrator.

Classification

The Regional Administrator, Southwest Region, NMFS, determined that Amendment 8 is necessary for the conservation and management of the coastal pelagics fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Council prepared an FSEIS for Amendment 8. A notice of availability for Amendment 8 was published on March 26, 1999 (64 FR 14720). Amendment 8 contains a framework management process that makes it possible for the Council to change and modify management procedures in a timely and efficient manner without amending the FMP. The framework management process will allow the Council to act quickly to address resource conservation and ecological issues. A limited entry program will control the expansion of fishing effort. The benefits of limited entry are primarily socioeconomic because limited entry prevents excess invested capital and reduces the likelihood of detrimental environmental effects, as open access fisheries tend to reduce efficiency and increase pressure on fishermen to overharvest fishery resources. Pacific sardine and Pacific mackerel are designated as actively managed, and are subject to species-specific controls. Allowable harvest is based on MSY and the importance of each species as forage for other fish, marine mammals, and birds. This approach is expected to minimize environmental impacts. Northern anchovy, jack mackerel, and market squid are designated as monitored species. No current biomass estimates are determined for these monitored species, although a constant ABC for each species is based on the long-term yield of each species. This approach is expected to minimize environmental impacts. Although Northern anchovy and jack mackerel may be considered underutilized species, increasing the harvest of these species will only occur following additional review. Almost nothing is known about market squid. However, an aggressive research program is underway to define the status of the resource, develop a management program, and minimize any possible environmental impacts resulting from their harvest.

The Assistant Administrator for Fisheries, NOAA, for good cause, finds under 5 U.S.C. 553(d)(3), that a 30-day delay in effectiveness for those provisions of the final rule that authorize processing of applications for limited entry permits would be contrary to the public interest. Making these provisions effective as of the date of publication of this rule will ensure that applicants for limited entry permits have sufficient time to submit their applications and have them reviewed before the requirement to have permits onboard fishing vessels is enforced beginning on January 1, 2000.

This final rule has been determined to be not significant for the purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed, that it would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The information collection for the limited entry permit application has been approved by OMB, under OMB control number 0648–0204 for Federal fishing permits. The public reporting burden for this requirement is estimated to be 30 minutes for a limited entry permit application, 30 minutes for requesting the transfer of a permit, and 2 hours to prepare a request for the appeal of a decision to deny a permit. The additional permit qualification documentation and burden of proof is estimated to take 1 hour per response. These estimates include the time for reviewing instructions, searching

existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The requirement to affix the official number of the vessel has been approved by OMB under OMB control number 0648–0361. The public reporting burden for this requirement is estimated to be 45 minutes to affix the official number of a vessel to its bow and weather deck. Send comments regarding these burden estimates or any other aspect of the data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to OMB, Washington, DC 20503 (ATTN: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Informal consultations under the Endangered Species Act were both concluded with NMFS and the U.S. Fish and Wildlife Service on June 10, 1999. As a result of these informal consultations, the Regional Administrator determined that fishing activities conducted under this rule are not likely to adversely affect endangered or threatened species or critical habitat.

A second informal consultation was initiated with the Protected Resources Division, Southwest Region, regarding the effects of Amendment 8 on eight salmon and steelhead evolutionary significant units declared as threatened in March 1999. Included in the consultation were Coastal California Chinook and Central Valley Spring Chinook, which are pending listing as threatened. On September 2, 1999, a determination was received declaring that Amendment 8 would not likely adversely affect these listed species and those pending listing.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: December 7, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902, and 50 CFR part 660, are amended as follows:

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, the table in paragraph (b) is amended by removing § 660.505 and its corresponding OMB number–0306 and by adding under 50 CFR the following entries in numerical order:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section wherethe information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
50 CFR:	
* * * * *	
660.504	–0361
660.512	–0204
* * * * *	

50 CFR CHAPTER VI

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

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

§ 660.302 [Amended]

2. In § 660.302, under the definition of ''Groundfish'' and under the term ''Roundfish,'' remove the text ''jack mackerel (north of 39° N. lat.), *Trachurus symmetricus*.''

3. In § 660.337, paragraph (a)(1) is revised to read as follows:

§ 660.337 Limited entry permits—''designated species B'' endorsement.

(a) * * *

(1) *General. Designated species* means Pacific whiting and shortbelly rockfish. Bycatch allowances in fisheries for these species will be established using the procedures specified for incidental allowances in joint venture and foreign fisheries in the PCGFMP.

* * * * *

4. Revise Subpart I to read as follows:

Subpart I-Coastal Pelagics Fisheries

Sec.
660.501 Purpose and scope.
660.502 Definitions.
660.503 Management subareas.
660.504 Vessel identification.
660.505 Prohibitions.
660.506 Gear restrictions.
660.507 Closed areas to reduction fishing.
660.508 Annual specifications.
660.509 Closure of directed fishery.
660.510 Fishing seasons.
660.511 Catch restrictions.
660.512 Limited entry fishery.
660.513 Permit conditions.
660.514 Transferability.
660.515 Renewal of limited entry permits.
660.516 Exempted fishing.
660.517 Framework for revising regulations.
Figure 1 to Subpart I–Existing California Area Closures

Subpart I—Coastal Pelagics Fisheries

§ 660.501 Purpose and scope.

This subpart implements the Fishery Management Plan for Coastal Pelagic Species (FMP). These regulations govern commercial fishing for CPS in the EEZ off the coasts of Washington, Oregon, and California.

§ 660.502 Definitions.

In addition to the definitions in the Magnuson-Stevens Act and in § 600.10 of this chapter, the terms used in this subpart have the following meanings:

Actively managed species (AMS) means those CPS for which the Secretary has determined that harvest guidelines or quotas are needed by Federal management according to the provisions of the FMP.

Advisory Subpanel (AP) means the Coastal Pelagic Species Advisory Subpanel that comprises members of the fishing industry and public appointed by the Council to review proposed actions for managing the coastal pelagic fisheries.

Biomass means the estimated amount, by weight, of a coastal pelagic species population. The term biomass means total biomass (age 1 and above) unless stated otherwise.

Coastal pelagic species (CPS) means northern anchovy (*Engraulis mordax*), Pacific mackerel (*Scomber japonicus*), Pacific sardine (*Sardinops sagax*), jack mackerel (*Trachurus symmetricus*), and market squid (*Loligo opelescens*).

Coastal Pelagic Species Management Team (CPSMT) means the individuals appointed by the Council to review, analyze, and develop management measures for the CPS fishery.

Council means the Pacific Fishery Management Council, including its CPSMT, AP, Scientific and Statistical Committee (SSC), and any other committee established by the Council.

Finfish means northern anchovy, Pacific mackerel, Pacific sardine, and jack mackerel.

Fishery Management Area means the EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nautical miles offshore, bounded in the north by the Provisional International Boundary between the United States and Canada, and bounded in the south by the International Boundary between the United States and Mexico.

Fishing trip means a period of time between landings when fishing is conducted.

Harvest guideline means a specified numerical harvest objective that is not a quota. Attainment of a harvest guideline does not require complete closure of a fishery.

Harvesting vessel means a vessel involved in the attempt or actual catching, taking or harvesting of fish, or any activity that can reasonably be expected to result in the catching, taking or harvesting of fish.

Land or *Landing* means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish onboard the vessel are counted as part of the landing.

Limited entry fishery means the commercial fishery consisting of vessels fishing for CPS in the CPS Management Zone under limited entry permits issued under § 660.512.

Live bait fishery means fishing for CPS for use as live bait in other fisheries.

Monitored species (MS) means those CPS the Secretary has determined not to need management by harvest guidelines or quotas according to the provisions of the FMP.

Nonreduction fishery means fishing for CPS for use as dead bait or for processing for direct human consumption.

Owner, means a person who is identified as the current owner in the Certificate of Documentation (CG-1270) issued by the U.S. Coast Guard for a documented vessel, or in a registration certificate issued by a state or the U.S. Coast Guard for an undocumented vessel.

Person, means any individual, corporation, partnership, association or other entity (whether or not organized or existing under the laws of any state), and any Federal, state, or local government, or any entity of any such government that is eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a).

Processing or *to process* means preparing or packaging coastal pelagic species to render the fish suitable for human consumption, pet food, industrial uses or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil, but does not mean heading and gutting unless there is additional preparation.

Prohibited Species means all species of trout and salmon (*Salmonidae*) and Pacific halibut (*Hippoglossus stenolepis*).

Quota means a specified numerical harvest objective for a single species of CPS, the attainment (or expected attainment) of which causes the complete closure of the fishery for that species.

Reduction fishery means fishing for CPS for the purposes of conversion into fish flour, fish meal, fish scrap, fertilizer, fish oil, other fishery products, or byproducts for purposes other than direct human consumption.

Regional Administrator means the Regional Administrator, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, or a designee.

Reserve means a portion of the harvest guideline or quota set aside at the beginning of the year for specific purposes, such as for individual harvesting groups to ensure equitable distribution of the resource or to allow for uncertainties in preseason estimates of DAP and JVP.

Sustainable Fisheries Division (SFD) means the Assistant Regional Administrator for Sustainable Fisheries, Southwest Region, NMFS, or a designee.

Totally lost means that the vessel being replaced no longer exists *in specie*, or is absolutely and irretrievably sunk or otherwise beyond the possible control of the owner, or the costs of repair (including recovery) would exceed the repaired value of the vessel.

Trip limit means the total allowable amount of a CPS species by weight or by percentage of weight of fish on board the vessel that may be taken and retained, possessed, or landed from a single fishing trip by a vessel that harvests CPS.

§ 660.503 Management subareas.

The fishery management area is divided into subareas for the regulation of fishing for CPS, with the following designations and boundaries:

(a) *CPS Limited Entry Zone* means the EEZ between:

(1) Northern boundary—at 39°00'00'' N. lat. off California; and

(2) Southern boundary—the United States-Mexico International Boundary, which is a line connecting the following coordinates:

32°35'22'' N. lat., 117°27'49'' W. long.
32°37'37'' N. lat., 117°49'31'' W. long.
31°07'58'' N. lat., 118°36'18'' W. long.
30°32'31'' N. lat., 121°51'58'' W. long.

(b) *Subarea A* means the EEZ between:

(1) Northern boundary—the United States-Canada Provisional International Boundary, which is a line connecting the following coordinates:

48°29'37.19'' N. lat. 124°43'33.19'' W. long.
48°30'11'' N. lat. 124°47'13'' W. long.
48°30'22'' N. lat. 124°50'21'' W. long.
48°30'14'' N. lat. 124°54'52'' W. long.
48°29'57'' N. lat. 124°59'14'' W. long.
48°29'44'' N. lat. 125°00'06'' W. long.
48°28'09'' N. lat. 125°05'47'' W. long.
48°27'10'' N. lat. 125°08'25'' W. long.
48°26'47'' N. lat 125°09'12'' W. long.
48°20'16'' N. lat. 125°22'48'' W. long.
48°18'22'' N. lat. 125°29'58'' W. long.
48°11'05'' N. lat. 125°53'48'' W. long.
47°49'15'' N. lat. 126°40'57'' W. long.
47°36'47'' N. lat. 127°11'58'' W. long.
47°22'00'' N. lat. 127°41'23'' W. long.
46°42'05'' N. lat. 128°51'56'' W. long.
46°31'47'' N. lat. 129°07'39'' W. long.; and

(2) Southern boundary—at 35°40'00'' N. lat. (Pt. Piedras Blancas).

(c) *Subarea B* means the EEZ between:

(1) Northern boundary—35°40'00'' N. lat. (Pt. Piedras Blancas); and

(2) Southern boundary—the United States-Mexico International Boundary described in paragraph (a)(2) of this section.

§ 660.504 Vessel identification.

(a) *Official number*. Each fishing vessel subject to this subpart must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from enforcement vessels and aircraft.

(b) *Numerals*. The official number must be affixed to each vessel subject to this subpart in block Arabic numerals at least 14 inches (35.56 cm) in height. Markings must be legible and of a color that contrasts with the background.

§ 660.505 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(a) In the CPS Limited Entry Zone, take and retain, possess or land more than 5 mt of CPS finfish, other than live bait, on a harvesting vessel without a limited entry permit.

(b) In the CPS Limited Entry Zone, take and retain, possess or land more than 125 mt of CPS finfish on a harvesting vessel.

(c) Sell CPS without an applicable commercial state fishery license.

(d) Fish in the reduction fishery for CPS in any closed area specified in § 660.507.

(e) Fish in the reduction fishery for northern anchovy using gear not authorized under § 660.506.

(f) When fishing for CPS, fail to return a prohibited species to the sea immediately with a minimum of injury.

(g) Falsify or fail to affix and maintain vessel markings as required by § 660.504.

(h) Fish for CPS in violation of any terms or conditions attached to an exempted fishing permit issued under § 600.745 of this chapter.

(i) When a directed fishery has been closed, take and retain, possess, or land more than the incidental trip limit announced in the **Federal Register**.

(j) Refuse to submit fishing gear or fish subject to such person's control to inspection by an authorized officer, or to interfere with or prevent, by any means, such an inspection.

(k) Falsify or fail to make and/or file any and all reports of fishing, landing, or any other activity involving CPS, containing all data, and in the exact manner, required by the applicable State law, as specified in § 660.3.

(l) Fail to carry aboard a vessel that vessel's limited entry permit issued under § 660.512 or exempted fishing permit issued under § 660.516.

(m) Make a false statement on an application for issuing, renewing, transferring, or replacing a limited entry permit for the CPS fishery.

§ 660.506 Gear restrictions.

The only fishing gear authorized for use in the reduction fishery for northern anchovy off California are round haul nets that have a minimum wet-stretch mesh size of 10/16 of an inch (1.59 cm) excluding the bag portion of a purse seine. The bag portion must be constructed as a single unit and must not exceed a rectangular area, adjacent to 20 percent of the total corkline of the purse seine. Minimum mesh size requirements are met if a stainless steel wedge can be passed with only thumb pressure through 16 of 20 sets of 2 meshes each of wet mesh. The wedges used to measure trawl mesh size are made of 20 gauge stainless steel and will be no wider than 10/16 of an inch (1.59 cm) less one thickness of the metal at the widest part.

§ 660.507 Closed areas to reduction fishing.

The following areas are closed to reduction fishing:

(a) *Farallon Islands closure* (see Figure 1 to this subpart). The portion of Subarea A bounded by—

(1) A straight line joining Pigeon Point Light (37°10.9' N. lat., 122°23.6' W. long.) and the U.S. navigation light on Southeast Farallon Island (37°42.0' N. lat., 123°00.1' W. long.); and

(2) A straight line joining the U.S. navigation light on Southeast Farallon Island (37°42.0' N. lat., 123°00.1' W. long.) and the U.S. navigation light on Point Reyes (37°59.7' N. lat., 123°01.3' W. long.).

(b) *Subarea B closures*. Those portions of Subarea B described as–

(1) *Oxnard closure* (see Figure 1 to this subpart). The area that extends offshore 4 miles from the mainland shore between lines running 250° true from the steam plant stack at Manadalay Beach (34°12.4' N. lat., 119°15.0' W. long.) and 220° true from the steam plant stack at Ormond Beach (34°07.8' N. lat., 119°10.0' W. long.).

(2) *Santa Monica Bay closure* (see Figure 1 to this subpart). Santa Monica Bay shoreward of that line from Malibu Point (34°01.8' N. lat., 188°40.8' W. long.) to Rocky Point (Palos Verdes Point) (33°46.5' N. lat., 118°25.7' W. long.).

(3) *Los Angeles Harbor closure* (see Figure 1 to this subpart). The area outside Los Angeles Harbor described by a line extending 6 miles 180° true from Point Fermin (33°42.3' N. lat., 118°17.6' W. long.) and then to a point located 3 miles offshore on a line 225° true from Huntington Beach Pier (33°39.2' N. lat., 118°00.3' W. long.).

(4) *Oceanside to San Diego closure* (see Figure 1 to this subpart). The area 6 miles from the mainland shore south of a line running 225° true from the tip of the outer breakwater (33°12.4' N. lat., 117°24.1' W. long.) of Oceanside Harbor to the United States-Mexico International Boundary.

§ 660.508 Annual specifications.

(a) The Regional Administrator will determine the harvest guidelines or quotas for all AMS from the estimated biomass and the formulas in the FMP.

(b) Harvest guidelines or quotas, including any apportionment between the directed fishery and set-aside for incidental harvest, will be published in the **Federal Register** before the beginning of the relevant fishing season.

(c) The announcement of each harvest guideline or quota will contain the following information:

(1) A summary of the status of AMS and MS;

(2) The estimated biomass on which the harvest guideline or quota was determined;

(3) The portion, if appropriate, of the harvest guideline or quota set aside to allow for incidental harvests after closure of the directed fishery;

(4) The estimated level of the incidental trip limit that will be allowed after the directed fishery is closed; and

(5) The allocation, if appropriate, between Subarea A and Subarea B.

(d) Harvest guidelines and quotas will receive a public review according to the following procedure:

(1) A meeting will be held between the Council's CPSMT and AP, where the estimated biomass and the harvest guideline or quota will be reviewed and public comments received. This meeting will be announced in the **Federal Register** before the date of the meeting, if possible.

(2) All materials relating to the biomass and harvest guideline or quota will be forwarded to the Council and its Scientific and Statistical Committee and will be available to the public from the Regional Administrator.

(3) At a regular meeting of the Council, the Council will review the estimated biomass and harvest guideline or quota and offer time for public comment. If the Council requests a revision, justification must be provided.

(4) The Regional Administrator will review the Council's recommendations, justification, and public comments and base his or her final decision on the requirements of the FMP.

§ 660.509 Closure of directed fishery.

When the directed fishery portion of the harvest guideline or quota is estimated to be taken, the Regional Administrator will announce in the **Federal Register** the date of closure of the directed fishery for CPS and the amount of the incidental trip limit that will be allowed.

§ 660.510 Fishing seasons.

All seasons will begin at 0001 hours and terminate at 2400 hours local time. Fishing seasons for the following CPS species are:

(a) *Pacific sardine*. January 1 to December 31, or until closed under § 660.509.

(b) *Pacific mackerel*. July 1 to June 30, or until closed under § 660.509.

§ 660.511 Catch restrictions.

(a) All CPS harvested shoreward of the outer boundary of the EEZ (0–200 nautical miles off shore) will be counted toward the catch limitations specified in this section.

(b) The trip limit for harvesting vessels fishing in the CPS Limited Entry

Zone for CPS other than live bait without a limited entry permit is 5 mt tons of all CPS finfish combined.

(c) The trip limit for vessels with a limited entry permit on a fishing trip in which the vessel fishes or lands fish in the Limited Entry Zone is 125 mt of all CPS finfish combined.

(d) After the directed fishery for a CPS is closed under § 660.509, no person may take and retain, possess or land more of that species than the incidental trip limit set by the Regional Administrator.

(e) While fishing for CPS, all species of trout and salmon (*Salmonidae*) and Pacific halibut (*Hippoglossus stenolepis*) are prohibited species and must be released immediately with a minimum of injury.

§ 660.512 Limited entry fishery.

(a) *General*. (1) This section applies to fishing for or landing CPS finfish in the limited entry fishery in the Limited Entry Zone.

(2) Effective January 1, 2000, the owner of a vessel with more than 5 mt of CPS finfish on board in the CPS Limited Entry Zone, other than live bait, must have a limited entry permit registered for use with that vessel.

(3) Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) qualifies to be issued or may hold, by ownership or otherwise, a limited entry permit.

(b) *Initial qualification*. (1) A limited entry permit for a vessel will be issued only if that vessel landed 100 mt of CPS finfish from January 1, 1993, through November 5, 1997.

(2) A limited entry permit will be issued only to the current owner of the vessel, unless:

(i) The previous owner of a vessel qualifying for a permit, by the express terms of a written contract, reserved the right to the limited entry permit, in which case the limited entry permit will be issued to the previous owner based on the catch history of the qualifying vessel, or

(ii) A vessel that would have qualified for a limited entry permit was totally lost prior to issuance of a limited entry permit. In this case, the owner of the vessel at the time it was lost retains the right to a permit for a replacement vessel, unless the owner conveyed the right to another person by the express terms of a written contract. The lost vessel must be replaced within 2 years of the date that the qualifying vessel was lost, and the replaced vessel must be of equal or less net tonnage.

(c) *Documentation and burden of proof*. A vessel owner (or person holding limited entry rights under the express terms of a written contract as specified in paragraph (a)(2)) of this section applying for issuance, renewal, transfer, or registration of a limited entry permit must prove that the qualification requirements are met by submitting the following documentation:

(1) A certified copy of the vessel's documentation as a fishing vessel of the United States (U.S. Coast Guard or state) is the best evidence of vessel ownership;

(2) A certified copy of a state fish landing receipt is the best evidence of a landing of a vessel;

(3) A copy of a written contract reserving or conveying limited entry rights is the best evidence of reserved or acquired rights; and

(4) Other relevant, credible evidence that the applicant may wish to submit or that the SFD may request or require.

(d) *Fees*. The Regional Administrator may charge fees to cover administrative expenses related to issuing limited entry permits, as well as renewing, transferring, and replacing permits. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application.

(e) *Initial decisions*. (1) The SFD will make initial decisions regarding issuing, renewing, transferring, and registering limited entry permits.

(2) Adverse decisions shall be in writing and shall state the reasons for the adverse decision.

(3) The SFD may decline to act on an application for issuing, renewing, transferring, or registering a limited entry permit and will notify the applicant, if the permit sanction provisions of the Magnuson-Stevens Act at 16 U.S.C. 1858(a) and implementing regulations at 15 CFR part 904, subpart D, apply.

(f) *Initial issuance*. (1) The SFD will issue limited entry permits.

(2) In order to receive a final decision on a limited entry permit application before January 1, 2000, an applicant must submit the application to the SFD on or before February 14, 2000.

(3) A separate, complete, and accurate application form, accompanied by any required supporting documentation and the appropriate fee, must be submitted for each vessel for which a limited entry permit is sought.

(4) Upon receipt of an incomplete or improperly executed application, the SFD will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered void.

(5) The SFD may request further documentation before acting on an application.

(6) The SFD will not accept applications for a limited entry permit after July 1, 2000.

(g) *Appeals*. (1) Any applicant for an initial permit may appeal the initial issuance decision to the Regional Administrator. To be considered by the Regional Administrator, such appeal must be in writing and state the reasons for the appeal, and must be submitted within 30 days of the action by the Regional Administrator. The appellant may request an informal hearing on the appeal.

(2) Upon receipt of an appeal authorized by this section, the Regional Administrator will notify the permit applicant, or permit holder as appropriate, and will request such additional information and in such form as will allow action upon the appeal.

(3) Upon receipt of sufficient information, the Regional Administrator will decide the appeal in accordance with the permit eligibility criteria set forth in this section and in the FMP, as appropriate, based upon information relative to the application on file at NMFS and the Council and any additional information submitted to or obtained by the Regional Administrator, the summary record kept of any hearing and the hearing officer's recommended decision, if any, and such other considerations as the Regional Administrator deems appropriate. The Regional Administrator will notify all interested persons of the decision, and the reasons therefor, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(4) If a hearing is requested or if the Regional Administrator determines that one is appropriate, the Regional Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing to the applicant. The appellant and, at the discretion of the hearing officer, other interested persons may appear personally or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Regional Administrator.

(5) The Regional Administrator may adopt the hearing officer's

recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Administrator will notify interested persons of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Administrator's action shall constitute final action for the agency for the purposes of the APA.

(6) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Regional Administrator for good cause, either upon his or her own motion or upon written request from the appellant stating the reason(s) therefore.

§ 660.513 Permit conditions.

(a) A limited entry permit expires on failure to renew the limited entry permit as specified in § 660.515.

(b) A limited entry permit may not be used with a vessel unless it is registered for use with that vessel. Limited entry permits will be registered for use with a particular vessel at the time the permit is issued, renewed, or transferred.

(c) Limited entry permits issued or applied for under this subpart are subject to sanctions pursuant to the Magnuson-Stevens Act, 16 U.S.C. 1858(g), and 15 CFR part 904, subpart D.

§ 660.514 Transferability.

(a) Upon application by the permit holder, the SFD will process applications for transferring limited entry permits according to this section.

(b) Before January 1, 2001, a limited entry permit may be transferred to a different owner and/or for use with a different vessel. The permit may be transferred only once. No transfer is effective until the permit has been reissued and is in the possession of the new permit holder.

(c) After December 31, 2000, a permit may not be registered for use with a vessel other than the vessel for which it was registered on December 31, 2000, except as follows:

(1) The vessel to which the permit was registered on December 31, 2000 (the replaced vessel), is totally lost, stolen, or scrapped, such that it cannot be used in a federally regulated commercial fishery, and

(2) The replacement vessel to which the permit will be registered is of equal or less net tonnage than the replaced vessel, and

(3) The replaced vessel is owned by the permit holder.

(d) After December 31, 2000, a limited entry permit may not be transferred to a different owner.

§ 660.515 Renewal of limited entry permits.

(a) Each limited entry permit must be renewed by January 1 of even numbered years.

(b) The SFD will send notices to renew limited entry permits to the most recent address of the permit holder.

(c) The permit owner must provide SFD with notice of any address change within 15 days of the change.

(d) The permit holder must submit applications for renewal of a permit on forms available from the SFD.

(e) The permit owner is responsible for renewing a limited entry permit.

(f) An expired permit cannot be used to fish for CPS in the limited entry fishery.

§ 660.516 Exempted fishing.

(a) *General*. In the interest of developing an efficient and productive fishery for CPS, the Regional Administrator may issue exempted fishing permits (EFP) for the harvest of CPS that otherwise would be prohibited.

(b) No exempted fishing for CPS may be conducted unless authorized by an EFP issued for the participating vessel in accordance with the criteria and procedures specified in § 600.745 of this chapter.

§ 660.517 Framework for revising regulations.

(a) *General*. NMFS will establish and adjust specifications and management measures in accordance with procedures and standards in Amendment 8 to the FMP.

(b) *Annual actions*. Annual specifications are developed and implemented according to § 660.508.

(c) *Routine management measures*. Consistent with section. 2.1 of Amendment 8 to the FMP, management measures designated as routine may be adjusted during the year after recommendation from the Council, approval by NMFS, and publication in the **Federal Register**.

(d) *Changes to the regulations*. Regulations under this subpart may be promulgated, removed, or revised. Any such action will be made according to the framework measures in section 2 of Amendment 8 to the FMP and will be published in the **Federal Register**.

Figure 1 to Part 660, Subpart I—Existing California Area Closures (hatched areas extend to 3 miles offshore; cross-hatched areas extend beyond 3 miles offshore) and optional Catalina Channel foreign vessel closure (outlined by dashed lines)

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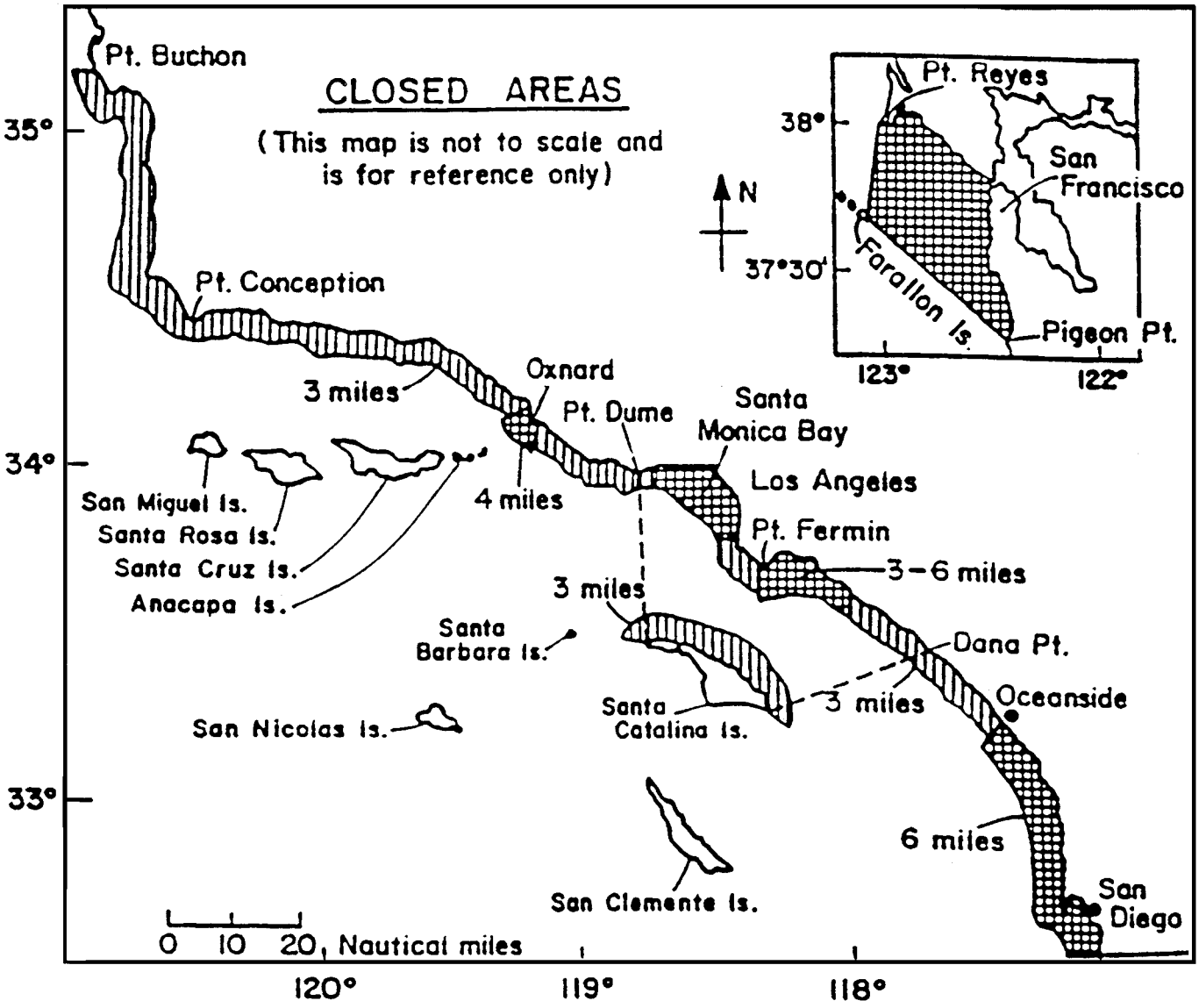

[FR Doc. 99–32320 Filed 12–14–99; 8:45 am]
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 99F–1423]

Indirect Food Additives: Paper and Paperboard Components

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 4,5-dichloro-1,2-dithiol-3-one (also known as 4,5-dichloro-3H-1,2-dithiol-3-one) as a slimicide in the manufacture of food-contact paper and paperboard. This action is in response to a petition filed by Yoshitomi Fine Chemicals, Ltd.

DATES: The regulation is effective December 15, 1999. Submit written objections and requests for a hearing by January 14, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 27, 1999 (64 FR 28825), FDA announced that a food additive petition (FAP 9B4654) had been filed by Yoshitomi Fine Chemicals, Ltd., c/o SRS International Corp., suite 1000, 1625 K St. NW., Washington, DC 20006–1604. The petition proposed to amend the food additive regulations in § 176.300 *Slimicides* (21 CFR 176.300) to provide for the safe use of 4,5-dichloro-1,2-dithiol-3-one as a slimicide in the manufacture of food-contact paper and paperboard.

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 1,2-dichloroethane and tetrachloroethylene, carcinogenic impurities resulting from the manufacture of the additive.

Residual amounts of reactants and manufacturing aids, such as 1,2-dichloroethane and tetrachloroethylene, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under the general safety standard 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 standard using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the intended use of the additive (*Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984)).

II. Safety of Petitioned Use of the Additive

FDA estimates that the petitioned use of the additive, 4,5-dichloro-1,2-dithiol-3-one, will result in exposure to no greater than 0.8 part per billion of the additive in the daily diet (3 kilogram (kg)) or an estimated daily intake of 2.4 micrograms per person per day (µg/p/d) (Ref. 1).

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. 2), 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 dietary exposure resulting from the petitioned use of the additive is safe.

FDA has evaluated the safety of this additive under the general safety standard, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by 1,2-dichloroethane and tetrachloroethylene, the carcinogenic chemicals that may be present as impurities in the additive. This risk evaluation of 1,2-dichloroethane and tetrachloroethylene has two aspects: (1) Assessment of the 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. 1,2-Dichloroethane

FDA has estimated the exposure to 1,2-dichloroethane from the petitioned use of the additive as a slimicide in the manufacture of food-contact paper and paperboard to be no more than 24 parts per trillion (ppt) in the daily diet (3 kg), or 72 nanograms(ng)/p/d (Ref. 4). The agency used data from a carcinogenesis bioassay on 1,2-dichloroethane, conducted by the National Cancer Institute (Ref. 3), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the petitioned use of the additive. The authors reported that the test material caused significantly increased incidence of squamous cell carcinomas of the forestomach and hemangiosarcomas of the circulatory system in male rats and adenocarcinomas of the mammary gland in female rats.

Based on the agency's estimate that exposure to 1,2-dichloroethane will not exceed 72 ng/p/d, FDA estimates that the upper-bound limit of lifetime human cancer risk from the petitioned use of the subject additive is 1.3×10^{-8}, or 1.3 in 100 million (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to 1,2-dichloroethane 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 reasonable certainty that no harm from exposure to 1,2-dichloroethane would result from the petitioned use of the additive.

B. Tetrachloroethylene

FDA has estimated the exposure to tetrachloroethylene from the petitioned use of the additive as a slimicide in the manufacture of food-contact paper and paperboard to be no more than 2.4 ppt in the daily diet (3 kg), or 7.2 ng/p/d (Ref. 4). The agency used data from a carcinogenesis bioassay on tetrachloroethylene, conducted by the National Toxicology Program (Ref. 5), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the petitioned use of the additive. The authors reported that the test material caused significantly increased incidence of hepatocellular adenomas and carcinomas in male mice and hepatocellular carcinomas in female mice.

Based on the agency's estimate that exposure to tetrachloroethylene will not exceed 7.2 ng/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the subject additive is 3.6×10^{-10}, or 3.6 in 10 billion (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to tetrachloroethylene 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 reasonable certainty that no harm from exposure to tetrachloroethylene would result from the petitioned use of the additive.

C. Need for Specifications

The agency also has considered whether specifications are necessary to control the amount of 1,2-dichloroethane and tetrachloroethylene as impurities in the additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low level at which 1,2-dichloroethane and tetrachloroethylene 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 small levels; and (2) the upper-bound limits of lifetime risk from exposure to 1,2-dichloroethane, and tetrachloroethylene are very low, less than 1.3 in 100 million, and 3.6 in 10 billion, respectively.

III. Conclusion

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive is safe, that the additive will achieve its intended technical effect, and therefore, that the regulations in § 176.300 should be amended as set forth below.

The additive, 4,5-dichloro-1,2-dithiol-3-one, intended for use as a slimicide in the manufacture of food-contact paper and paperboard, is regulated under section 409 of the act (21 U.S.C. 348) as a food additive and not as a pesticide chemical under section 408 of the act

(21 U.S.C. 346a). However, this intended use of 4,5-dichloro-1,2-dithiol-3-one may nevertheless be subject to regulation as a pesticide under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Therefore, manufacturers intending to use 4,5-dichloro-1,2-dithiol-3-one as a slimicide in the manufacture of food-contact paper and paperboard should contact the Environmental Protection Agency to determine whether this use requires a pesticide registration under FIFRA.

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.

IV. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 9B4654 (64 FR 28825). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

V. Paperwork Reduction Act of 1995

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

VI. Objections

Any person who will be adversely affected by this regulation may at any time on or before January 14, 2000, 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. 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 from the Chemistry and Environmental Review Team, FDA, to the Division of Petition Control, FDA, ''FAP 9B4654 (MATS # 1039)—SRS International Corp. (on behalf of Yoshitomi Fine Chemicals, Ltd.). 4,5-Dichloro-3H-1,2-Dithiol-3-One (RYH–86) as a Slimicide in the Manufacture of Paper and Paperboard. Division of Petition Control (DPC) E–Mail Request of 9–14–99,'' October 12, 1999.

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

3. ''Bioassay of 1,2-Dichloroethane for Possible Carcinogenicity,'' National Cancer Institute, NCI–CG–TR–55, 1978.

4. Memorandum from the Indirect Additives Branch, FDA, to the Executive Secretary, Quantitative Risk Assessment Committee, FDA, ''Third Estimation of the Upper-Bound Lifetime Risk From 1,2-Dichloroethane (DCE) and Tetrachloroethylene (TCE) in 4,5-Dichloro-1,2-Dithiol-3-One for FAP 8B4654,'' October 13, 1999.

5. ''Toxicology and Carcinogenisis Studies of Tetrachloroethylene (Perchloroethylene) in F344/N Rats and B6C3F$_1$ Mice (Inhalation Studies),'' *National Toxicology Program Technical Report Series No. 311*, 1986.

List of Subjects in 21 CFR Part 176

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 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 346, 348, 379e.

2. Section 176.300 is amended in the table in paragraph (c) by alphabetically adding an entry under the headings ''Lists of substances'' and ''Limitations'' to read as follows:

§ 176.300 Slimicides.

* * * * *

(c) * * *

List of substances	Limitations
* * *	* * *
4,5-dichloro-1, 2-dithiol-3-one (CAS Reg. No. 1192–52–5).	For use only at levels not to exceed 10 milligrams per kilogram in the pulp slurry.
* * *	* * *

* * * * *

Dated: December 7, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–32427 Filed 12–14–99; 8:45 am]

BILLING CODE 4160–01–F

OFFICE OF NATIONAL DRUG CONTROL POLICY

21 CFR Part 1401

RIN 3201–ZA02

Freedom of Information Act

AGENCY: Office of National Drug Control Policy.

ACTION: Final rule.

SUMMARY: The Office of National Drug Control Policy revises this rule to comply with the Electronic Freedom of Information Act. The rule defines records as defined in the Act, establishes an electronic reading room, institutes an expedited process for handling requests and conforms to the statutory time limitations for a response.

DATES: Effective December 15, 1999.

ADDRESSES: Send comments to Executive Office of the President, Office of National Drug Control Policy, Office of Legal Counsel, Attention General Counsel, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Daniel R. Petersen, (202) 395–6745.

SUPPLEMENTARY INFORMATION: This rule is not a major rule for the purposes of Executive Order 12866. As required by the Regulatory Flexibility Act, ONDCP certifies that this proposed rule would not have a significant impact on small business entities.

List of Subjects in 21 CFR Part 1401

Freedom of information, Organization and functions (Government agencies).

For the reasons stated in the preamble, the Office of National Drug Control Policy revises 21 CFR part 1401 to read as follows:

PART 1401—PUBLIC AVAILABILITY OF INFORMATION

Sec.

1401.1 Purpose.
1401.2 The Office of National Drug Control Policy—organization and functions.
1401.3 Definitions.
1401.4 Access to information.
1401.5 How to request records.
1401.6 Expedited process.
1401.7 Prompt response.
1401.8 Extension of time.
1401.9 Appeals.
1401.10 Fees to be charged—general.
1401.11 Fees to be charged—miscellaneous provisions.
1401.12 Fees to be charged—categories of requesters.
1401.13 Waiver or reduction of fees.

Authority: 5 U.S.C. 552.

§ 1401.1 Purpose.

The purpose of this part is to prescribe rules, guidelines and procedures to implement the Freedom of Information Act (FOIA), as amended, 5 U.S.C. 552.

§ 1401.2 The Office of National Drug Control Policy—organization and functions.

(a) The Office of National Drug Control Policy (ONDCP) was created by the Anti-Drug Abuse Act of 1988, 21 U.S.C. 1501 *et seq.*, and reestablished under 21 U.S.C. 1701 *et seq.* The mission of ONDCP is to coordinate the anti-drug efforts of the various agencies and departments of the Federal government, to consult with States and localities and assist their anti-drug efforts, to conduct a national media campaign, and to annually promulgate the National Drug Control Strategy.

(b) ONDCP is headed by the Director of National Drug Control Policy. The Director is assisted by a Deputy Director of National Drug Control Policy, a Deputy Director for Supply Reduction, a Deputy Director for Demand Reduction, and a Deputy Director for State and Local Affairs.

(c) Offices within ONDCP include Chief of Staff, and the Offices of Legal Counsel, Strategic Planning, Legislative Affairs, Programs Budget and Evaluation, Supply Reduction, Demand Reduction, Public Affairs, State and Local Affairs, and the Financial Management Office.

(d) The Office of Public Affairs is responsible for providing information to the press and to the general public. If members of the public have general questions about ONDCP that can be answered by telephone, they may call the Office of Public Affairs at (202) 395–6618. This number should not be used to make FOIA requests. All oral requests for information under FOIA will be rejected.

§ 1401.3 Definitions.

For the purpose of this part:

(a) All the terms defined in the Freedom of Information Act apply.

(b) *Commercial-use request* means a request from or on behalf of one who seeks information for a cause or purpose that furthers the commercial, trade or profit interests of the requester or the person or institution on whose behalf the request is made. In determining whether a requester properly belongs in this category, ONDCP will consider the intended use of the information.

(c) *Direct costs* means the expense actually expended to search, review, or duplicate in response to a FOIA request. For example, direct costs include 116% of the salary of the employee performing work and the actual costs incurred while operating equipment.

(d) *Duplicate* means the process of making a copy of a document. Such copies may take the form of paper, microform, audio-visual materials, or machine-readable documentation. ONDCP will provide a copy of the material in a form that is usable by the requester.

(e) *Educational institution* means 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 or programs of scholarly research.

(f) *Noncommercial scientific institution* means an institution that is not operated on a commercial basis as that term is defined in this section, and that is operated solely for the purpose of conducting scientific research not intended to promote any particular product or industry.

(g) *Records* and any other terms used in this part in reference to information includes any information that would be an agency record subject to the requirements of this part when maintained in any format, including electronic format.

(h) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. News is information about current events or information that would be of interest to the public. Examples of the news media include television or radio stations that broadcast to the public at large and publishers of news periodicals that make their products available to the general public for purchase or subscription. Freelance journalists may be regarded as working for the news media where they demonstrate a reasonable basis for expecting publication through that organization, even though not actually employed by it.

(i) *Request* means a letter or other written communication seeking records or information under FOIA.

(j) *Review* means the process of examining documents that are located during a search to determine if any portion should lawfully be withheld. It is the processing of determining disclosability.

(k) *Search* means to review, manually or by automated means, agency records for the purpose of locating those records responsive to a request.

§ 1401.4 Access to information.

The Office of National Drug Control Policy makes available information pertaining to matters issued, adopted, or promulgated by ONDCP, that are within the scope of 5 U.S.C. 552(a)(2). A public reading area and the ONDCP FOIA Handbook are located at http://www.whitehousedrugpolicy.gov/about/about.html.

§ 1401.5 How to request records.

(a) Each request must reasonably describe the record(s) sought including the type of document, specific event or action, originator of the record, date or time period, subject matter, location, and all other pertinent data.

(b) Requests must be received by ONDCP through the mail or by electronic facsimile transmission. Mailed requests must be addressed to Executive Office of the President, Office of National Drug Control Policy, Office of Legal Counsel, Washington, DC 20503. The applicable fax number is (202) 395–5543.

(c) The words ''FOIA REQUEST'' or ''REQUEST FOR RECORDS'' must be clearly marked on the cover-letter, letter and envelope. The time limitations imposed by § 1401.7 will not begin until the Office of the General Counsel identifies a letter or fax as a FOIA request.

§ 1401.6 Expedited process.

(a) Requests and appeals will be given expedited treatment whenever ONDCP determines either:

(1) The lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) An urgency to inform the public about an actual or alleged federal government activity occurs and the request is made by a person primarily engaged in disseminating information.

(b) A request for expedited processing may be made at the time of the initial request for records or at a later time.

(c) 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. A requester within the category in paragraph (a)(2) 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.

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

§ 1401.7 Prompt response.

The General Counsel, or designee, will determine within 20 days (excepting Saturdays, Sundays and legal public holidays) after the receipt of a FOIA request whether it is appropriate to grant the request and will provide written notification to the person making the request. If the request is denied, the written notification will include the names of the individuals who participated in the determination, the reasons for the denial, and that an appeal may be lodged within the Office of National Drug Control Policy.

§ 1401.8 Extension of time.

(a) In unusual circumstances, the Office of General Counsel may extend the time limit prescribed in § 1401.7 or § 1401.9 by written notice to the FOIA requester. The notice will state the reasons for the extension and the date a determination is expected. The extension period may be divided among the initial request and an appeal but will not exceed a total of 10 working days (excepting Saturdays, Sundays, or legal public holidays).

(b) The phrase ''unusual circumstances'' means:

(1) The requested records are located in establishments that are separated from the office processing the request;

(2) A voluminous amount of separate and distinct records are demanded in a single request; or

(3) Another agency or two or more components in the same agency have substantial interest in the determination of the request.

(c) Where unusual circumstance exist, ONDCP may provide an opportunity for amendment of the initial request so that the request may be timely processed. Refusal by the person to reasonably modify the request or arrange an alternative time frame shall be considered as a factor for purposes of 5 U.S.C. 552 (a)(6)(C).

(d) ONDCP may aggregate requests by a requester or a group of requestors where multiple requests reasonably appear to be a single request.

§ 1401.9 Appeals.

An appeal to the ONDCP must explain in writing the legal and factual basis for the appeal. It must be received by mail at the address specified in § 1401.5 within 30 days of receipt of a denial. The Director or designee will decide the appeal within 20 days (excepting Saturdays, Sundays, and legal public holidays). If the Director or designee deny an appeal in whole or in part, the written determination will contain the reason for the denial, the names of the individuals who participated in the determination, and the provisions for judicial review.

§ 1401.10 Fees to be charged—general.

ONDCP will recoup the full allowable costs it incurs in response to a FOIA request.

(a) *Manual search for records.* ONDCP will charge 116% of the salary of the individual(s) making a search.

(b) *Computerized search for records.* ONDCP will charge 116% of the salary of the programmer/operator and the apportionable time of the central processing unit directly attributed to the search.

(c) *Review of records.* ONDCP will charge 116% of the salary of the individual(s) conducting a review. Records or portions of records withheld under an exemption subsequently determined not to apply may be reviewed to determine the applicability of exemptions not considered. The cost for a subsequent review is assessable.

(d) *Duplication of records.* Request for copies prepared by computer will cost 116% of the apportionable operator time and the cost of the tape or disk. Other methods of duplication will cost 116% of the salary of the individual copying the data plus 15 cents per copy of 8½ x 11 inch original.

(e) *Other charges.* ONDCP will recover the costs of providing other services such as certifying records or sending records by special methods.

§ 1401.11 Fees to be charged—miscellaneous provisions.

(a) Remittance shall be mailed to the Office of Legal Counsel, ONDCP, Washington DC 20503, and made payable to the order of the Treasury of the United States on a postal money order or personal check or bank draft drawn on a bank in the United States.

(b) ONDCP may require advance payment where the estimated fee exceeds $250, or a requester previously failed to pay within 30 days of the billing date.

(c) ONDCP may assess interest charges beginning the 31st day of billing. Interest will be at the rate

prescribed in section 3717 of title 31 of the United States Code and will accrue from the date of the billing.

(d) ONDCP may assess search charges where records are not located or where records are exempt from disclosure.

(e) ONDCP may aggregate individual requests and charge accordingly for requests seeking portions of a document or documents.

§ 1401.12 Fees to be charged—categories of requesters.

(a) There are four categories of FOIA requesters: commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters.

(b) The specific levels of fees for each of these categories are:

(1) *Commercial use requesters.* ONDCP will recover the full direct cost of providing search, review and duplication services. Commercial use requesters will not receive free search-time or free reproduction of documents.

(2) *Educational and non-commercial scientific institution requesters.* ONDCP will charge the cost of reproduction, excluding charges for the first 100 pages. Requesters must demonstrate the request is authorized by and under the auspices of a qualifying institution and that the records are sought for scholarly or scientific research not a commercial use.

(3) *Requesters who are representatives of the news media.* ONDCP will charge the cost of reproduction, excluding charges for the first 100 pages. Requesters must meet the criteria in § 1401.3(h), and the request must not be made for a commercial use. A request that supports the news dissemination function of the requester shall not be considered a commercial use.

(4) *All other requesters.* ONDCP will recover the full direct cost of the search and the reproduction of records, excluding the first 100 pages of reproduction and the first two hours of search time. Requests for records concerning the requester will be treated under the fee provisions of the Privacy Act of 1974, 5 U.S.C. 552a, which permits fees only for reproduction.

§ 1401.13 Waiver or reduction of fees.

Fees chargeable in connection with a request may be waived or reduced where ONDCP determines that disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

Barry McCaffrey,

Director.

[FR Doc. 99–32495 Filed 12–14–99; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8847]

RIN 1545–AS39

Adjustments Following Sales of Partnership Interests

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document finalizes regulations relating to the optional adjustments to the basis of partnership property following certain transfers of partnership interests under section 743, the calculation of gain or loss under section 751(a) following the sale or exchange of a partnership interest, the allocation of basis adjustments among partnership assets under section 755, the allocation of a partner's basis in its partnership interest to properties distributed to the partner by the partnership under section 732(c), and the computation of a partner's proportionate share of the adjusted basis of depreciable property (or depreciable real property) under section 1017. The changes will affect partnerships and partners where there are transfers of partnership interests, distributions of property, or elections under sections 108(b)(5) or (c). In addition, the final regulations under section 732(c) reflect changes to the law made by the Taxpayer Relief Act of 1997.

DATES: *Effective Dates:* These regulations are effective December 15, 1999.

Applicability Date: These regulations apply to transfers of partnership interests and distributions occurring on or after December 15, 1999.

FOR FURTHER INFORMATION CONTACT: Matthew Lay, (202) 622–3050.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1588. Responses to these collections of information are mandatory for partnerships that have made an election under section 754 and for which a section 743 transfer has been made, and for partnerships which distribute property in a transaction subject to section 732(d).

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 control number assigned by the Office of Management and Budget.

The estimated annual burden per respondent varies from 1 hour to 300 hours, depending on the individual circumstances, with an estimated average of 4 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to these collections of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document (a) revises §§ 1.743–1 and 1.755–1 of the Income Tax Regulations (26 CFR part 1), and (b) amends §§ 1.732–1, 1.732–2, 1.734–1, 1.751–1, 1.754–1, and § 1.1017–1 of the Income Tax Regulations.

On January 29, 1998, proposed regulations (REG 209682–94) were published in the **Federal Register** (63 FR 4408). Written comments were received in response to the notice of proposed rulemaking. One speaker provided testimony at a public hearing held on September 10, 1998.

After consideration of all the comments, the proposed regulations under sections 732, 734, 743, 751, 755, and 1017 are adopted, as revised by this Treasury Decision.

Explanation of Revisions and Summary of Contents

1. Basis in Distributed Property

(a) Mandatory application of section 732(d). Section 1.732–1(d)(4) of the current regulations requires transferees to apply the special basis rule in certain

cases. In the preamble to the proposed regulations, the IRS and the Treasury Department requested comments on the proper scope of section 732(d), and specifically, under what circumstances, if any, the Secretary should continue to exercise his authority to mandate the application of section 732(d) to a transferee. Several commentators suggested that the mandatory application of section 732(d) no longer should be required, because the changes made to section 732(c) by the Taxpayer Relief Act of 1997, Public Law 105–34, 111 Stat. 788, 945–46 (1997), make the distortions targeted by the regulations less likely to occur. However, other commentators noted that distortions caused by section 732(c) still may occur. Accordingly, the rule contained in § 1.732–1(d)(4), which requires the mandatory application of section 732(d) in certain cases, remains in effect.

(b) Statement required by partnership. Because partners, rather than partnerships, are required to report basis adjustments under section 732(d), the final regulations require partnerships to provide transferees with such information as is necessary for the transferees properly to compute basis adjustments made under section 732(d). This information must be provided if a transferee notifies a partnership that it plans to make the election under section 732(d) or if a partnership makes a distribution subject to the mandatory application of section 732(d).

(c) Effective date. One commentator asked for clarification regarding the application of the final regulations to section 732(d) adjustments. If section 732(d) applies to a distribution, it is necessary to calculate the basis adjustments which would have been required under section 743(b) if a section 754 election were in effect for the partnership in the taxable year in which the partnership interest was transferred to the partner. In calculating these basis adjustments, the partnership should apply the final regulations under section 743 and 755 if the distribution to which section 732(d) applies occurs after December 15, 1999.

2. Basis Adjustments Under Section 743(b)

(a) Coordination with section 704(c). Where a partnership adopts the remedial allocation method, the proposed regulations provide that the section 704(c) built-in gain portion of a basis adjustment under section 743(b) shall be recovered over the remaining cost recovery period for the section 704(c) built-in gain. Some commentators suggested that the final regulations should provide this treatment for the section 704(c) built-in gain portion of the adjustment regardless of the method elected by the partnership for allocating section 704(c) built-in gain and loss. The IRS and the Treasury Department continue to believe that, except for partnerships which adopt the remedial allocation method, it is appropriate for sections 704(c) and 743(b) to operate independently. Accordingly, this change has not been adopted.

In the preamble to the proposed regulations, comments were requested concerning the application of the remedial allocation method to contributed property where there are no distortions caused by the ceiling rule at the time the property was contributed to the partnership. Even if it is not clear that the ceiling rule will apply at the time the property is contributed because the adjusted basis of the contributed property is sufficient so that the non-contributing partners will be allocated their appropriate share of depreciation or amortization attributable to the property, the partnership's adoption of the remedial method still may be relevant due to allocations resulting from a subsequent disposition of the property. For instance, suppose that partners A and B form a partnership and agree that each partner will be allocated a 50 percent share of all partnership items, and that the partnership will make allocations under section 704(c) using the traditional method. A contributes depreciable property with an adjusted tax basis of $40 and a book value of $50, and B contributes $50 in cash. At the time of the contribution, it is not readily apparent that the ceiling rule will have any application. However, if, before any federal income tax depreciation accrues with respect to the contributed property, the property's value declines to $40, and the property is sold for that amount, there will be no tax gain or loss. The book loss of $10 would be shared equally between A and B. In this situation, the ceiling rule would prevent B from being allocated the $5 tax loss to which it otherwise would be entitled. However, if the partnership elected to use the remedial method with respect to the contributed property, B would be allocated a $5 tax loss, and A would be allocated a corresponding $5 tax gain. In addition, if a contributing partner transfers its interest in a partnership during a period when a section 754 election is in effect, the section 704(c) method adopted by the partnership will determine the recovery period for the built-in gain portion of the transferee's section 743(b) adjustment. The IRS and the Treasury Department believe that under the current regulations under section 704(c), a partnership may use the remedial method under § 1.704–3, even where it is not readily apparent at the time the property is contributed that the ceiling rule will be applicable.

(b) Previously taxed capital. One commentator suggested that the second sentence in proposed § 1.743–1(d)(2), relating to the correlation between a partner's interest in previously taxed capital and the partnership's capital accounts, is redundant and should be deleted. This suggestion has been adopted; however, no substantive change is intended by the deletion.

(c) Common basis election. Some commentators suggested that the provision in the proposed regulations that permitted the partners to elect to apply negative basis adjustments under section 743(b) to the partnership's common basis should be deleted. The commentators argued that the provision was contrary to the purpose of section 743(b), because it permitted basis adjustments under section 743(b) to affect nontransferring partners. The commentators also argued that the provision would be used by a small number of partnerships and would add unnecessary complexity to the regulations. In response to these suggestions, the provision that permitted the partners to elect to apply negative basis adjustments under section 743(b) to the partnership's common basis has been deleted.

(d) Statements by partners. Some commentators suggested modifying the statements which partners are required to provide to the partnership in the case of transfers which result in basis adjustments under section 743(b). Many of these suggestions have been adopted. For example, the regulations specify that the transferee of a partnership interest is required to provide the name, address, and taxpayer identification number of the transferor only if that information is ascertainable by the transferee. The regulations also specify that if a partnership interest is transferred to a nominee which is required to furnish the statement under § 1.6031(c)–1T to the partnership, the nominee may satisfy the notice requirements of both the section 743 and 6031 regulations by providing a single statement with respect to that transfer, but only if the statement satisfies all requirements of both regulations.

The regulations require the transferee to sign the statement under penalties of perjury, and require the transferee to provide the amount of any liabilities assumed or taken subject to by the transferee, and any other information

necessary for the partnership to compute the transferee's basis in the partnership interest. In order to assist the partnership in properly calculating depreciation and amortization deductions which may be subject to anti-churning provisions, the regulations require the transferee to describe its relationship, if any, to the transferor. Finally, the statement required by a transferee that acquires an interest by death must include the date of the decedent's death.

One commentator suggested that the statement required by a transferee that acquires a partnership interest by sale or exchange should be provided within 30 days of the sale or exchange, regardless of whether or not the transfer occurs at the end of the calendar year. This change has been adopted.

One commentator suggested that references to the tax matters partner in § 1.743–1(k) of the proposed regulations (regarding the partnership's obligations where a partner's statement is clearly erroneous, or a partner fails to notify the partnership that an interest has been transferred and the partnership has actual knowledge of the transfer) should be changed. This commentator emphasized that while the tax matters partner has a specialized role with respect to consolidated administrative and judicial proceedings to determine the tax treatment of partnership items at the partnership level, the tax matters partner does not have any special responsibilities with respect to federal income tax reporting. The final regulations adopt this comment. Section 1.743–1(k) now refers to partners who are responsible for federal income tax reporting by the partnership.

(e) Oil and gas. One commentator suggested that the example described in § 1.743–1(j)(6) should be changed to describe a non-oil and gas property. This change has been made. The commentator also suggested that in the case of domestic oil and gas properties that are depleted at the partner level, the transferee partner (rather than the partnership) should be required to make and allocate basis adjustments among such properties. The final regulations adopt this comment.

The same commentator suggested that the regulations should specify a method for adjusting the basis of section 613A(c)(7)(D) properties in order to account for percentage depletion made by a partner with respect to such properties. Under the principles of § 1.743–1(j), percentage depletion should reduce first any carryover basis under § 1.613A–3(e)(6)(iv). After the carryover basis has been recovered, any further percentage depletion should reduce the section 743 adjustment for the property.

3. Sales of Partnership Interests

One commentator suggested that references to fair market value should specify whether fair market value is determined taking into account section 7701(g), which generally provides that fair market value shall be treated as being not less than the amount of any nonrecourse indebtedness to which the property is subject. The regulations specify that for purposes of the hypothetical sale employed to determine the income or loss realized by a partner upon the sale or exchange of its interest in section 751 property, fair market value is determined taking into account section 7701(g). Basis adjustments under section 743(b) also are allocated by reference to a hypothetical transaction. The IRS and the Treasury Department intend to issue guidance in the near future which will provide rules for determining the fair market value of partnership assets in certain situations, including for purposes of allocating section 743(b) basis adjustments upon the transfer of a partnership interest. The IRS and the Treasury Department anticipate that the guidance will provide that section 7701(g) will apply in determining the fair market value of partnership assets for purposes of allocating section 743(b) basis adjustments.

One commentator suggested that where a partnership interest is sold or exchanged, the transferor and the transferee of a partnership interest should be permitted jointly to assign values to partnership assets in a written agreement. Because this approach is inconsistent with the hypothetical sale approach of the regulations, this suggestion has not been adopted.

4. Elections Under Section 754

One commentator requested that partnerships be granted a one-time right to revoke section 754 elections in effect for such partnerships. Given the significant changes to the rules made by these final regulations as compared to the regulations that were in effect at the time that section 754 elections previously were made, the IRS and Treasury believe that it is appropriate to provide for a one-time revocation of such elections. Accordingly, a partnership having an election in effect under section 754 for its taxable year that includes December 15, 1999 may revoke such election by attaching a statement to the partnership's return for that year. The return must be filed on or before the due date (including extensions) for the return for that year.

5. Allocation of Basis Adjustments Among Partnership Assets

(a) Income in respect of a decedent. One commentator requested that the final regulations illustrate the allocation of basis adjustments among partnership assets where one or more of such assets represents income in respect of a decedent. Where a partnership interest is transferred as a result of the death of a partner, under section 1014(c) the transferee's basis in its partnership interest is not adjusted for that portion of the interest, if any, which is attributable to items representing income in respect of a decedent under section 691. Because the transferee's basis in its partnership interest does not include the value of assets which represent income in respect of a decedent, the section 743(b) adjustment likewise does not reflect the value of such assets. *George Edward Quick's Trust*, 54 TC 1336 (1970) (acq.), *aff'd per curiam*, 444 F.2d 90 (8th Cir. 1971); *Chrissie H. Woodhall*, 28 T.C.M. 1438 (1969), *aff'd*, 454 F.2d 226 (9th Cir. 1972); Rev. Rul. 66–325, 1966–2 C.B. 249. Where a partnership holds assets that represent income in respect of a decedent, the section 743(b) adjustment should be allocated solely to other assets. Accordingly, the final regulations provide that if a partnership interest is transferred as a result of the death of a partner, and the partnership holds assets representing income in respect of a decedent, no part of the basis adjustment under section 743(b) is allocated to these assets.

(b) Transferred basis transactions. One commentator called for a revised system for allocating basis adjustments under section 743(b) which are triggered by exchanges in which the transferee's basis in the interest is determined in whole or in part by reference to the transferor's basis in the interest. In many such cases, the net section 743(b) adjustment will be zero. However, a positive or negative section 743(b) adjustment may result, because the transferee's basis in the interest may not be equal to the transferee's share of the partnership's bases in its assets.

The IRS and the Treasury Department believe that, although these transferred basis transactions involve transfers which are subject to section 743(b), the new, comprehensive basis allocation rules in the proposed regulations should not be available. For example, where a partnership interest is contributed to a corporation in a transaction to which section 351 applies, or to a partnership in a transaction to which section 721(a) applies, the transferor merely has changed the form of its investment. If

the allocation rules which apply to other section 743(b) transfers were applied to these exchanges, then partners could use these exchanges to shift basis from capital gain assets to ordinary income assets, or vice versa.

Therefore, the final regulations contain special basis allocation rules for transferred basis exchanges. The special rules generally are modeled on the rules for allocating basis adjustments under section 734(b). The final regulations do not contain a specific anti-abuse rule regarding the special basis allocation rules which are applicable to such transfers. However, there may be situations where taxpayers will attempt to undertake abusive transactions using these special rules. For instance, a partner could acquire a partnership interest during a year in which no section 754 election is in effect, and then (in a related transaction) contribute the property to a wholly-owned corporation in order to take advantage of the basis allocation rules applicable to transferred basis exchanges. In appropriate situations, the IRS may attack such abusive transactions under a variety of judicial doctrines, including substance over form or step transaction, or under § 1.701–2 of the regulations.

(c) Unrealized receivables under section 751(c). One commentator requested that the final regulations illustrate the effect of depreciation recapture on the allocation of basis adjustments among partnership assets under section 755. For purposes of this section, the final regulations treat depreciation recapture, and any other properties or potential gain treated as unrealized receivables under section 751(c) and the regulations thereunder, as separate assets that are ordinary income property.

(d) Special rules for securities partnerships and tiered partnerships. One commentator suggested that the regulations permit securities partnerships to allocate basis adjustments among partnership assets using an aggregation method. Another commentator requested that the regulations clarify how the regulations would apply to tiered partnerships. The IRS and the Treasury Department believe that a method for allocating basis adjustments among partnership assets on an aggregate basis is not consistent with the hypothetical sale of individual assets, which is required by the regulations. In addition, the IRS and Treasury Department believe that special rules for tiered partnerships would make the regulations more complex. Therefore, these changes have not been adopted.

6. Other Comments

One commentator suggested that for purposes of allocating basis adjustments among partnership assets, the values of all partnership assets should be determined by reference to the basis of the transferee or distributee partner in its partnership interest. This suggestion is being considered in connection with a separate project currently under review by the IRS and the Treasury Department.

One commentator suggested that the language of section 743 does not authorize regulations that permit both positive and negative adjustments as part of the same transaction. The IRS and the Treasury Department continue to believe that this aspect of the regulations is within the IRS's authority to administer sections 743 and 755.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has been determined that a final regulatory flexibility analysis is required for the collection of information in this Treasury decision under 5 U.S.C. 604. A summary of the analysis is set forth below under the heading ''Summary of Final Regulatory Flexibility Act Analysis.'' Pursuant to section 7805(f) of the Internal Revenue Code, these final regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Summary of Final Regulatory Flexibility Act Analysis

This analysis is required under the Regulatory Flexibility Act (5 U.S.C. chapter 6). In general, the regulations require a transferee that acquires an interest in a partnership with an election under section 754 in effect to notify the partnership of the transfer. This notification must include the name and taxpayer identification number of the transferee and the transferee's basis in the acquired partnership interest. The partnership is required to include a statement with its Form 1065, U.S. Partnership Return of Income, for the taxable year in which the partnership acquires knowledge of the transfer. This statement must identify the name and taxpayer identification number of the transferee, the computation of the basis adjustment, and the allocation of that adjustment to partnership properties. These requirements will ensure that the partnership has notice that a transfer has occurred and that the proper basis adjustments are computed. The legal basis for these requirements is contained in sections 743(b), 6001, and 7805(a).

If an interest is transferred in a partnership holding domestic oil and gas properties that are depleted at the partner level under 613A(c)(7)(D), the regulations require the transferee partner (rather than the partnership) to make and allocate basis adjustments under section 743(b) among such properties.

There were approximately 1,494,000 partnerships in 1994. However, these regulations apply only to partnerships that have made an election under section 754. The election under section 754 is generally not made unless there has been a transfer of a partnership interest or a distribution by the partnership. Moreover, the effects of the election attach to specific items of partnership property and may provide only temporary benefits for the partners. Except for the one-time revocation which is allowed in connection with the promulgation of these final regulations, the election cannot be revoked without the consent of the Secretary. The IRS and the Treasury Department believe that most partnerships do not make the election under section 754. Therefore, most partnerships will not be affected by the regulations in any given year.

After a partner conveys information to the partnership concerning a transfer of a partnership interest, the partnership must adjust the partner's interest in the basis of partnership property. Because these basis adjustments will affect the partner's share of depreciation or amortization deductions and amounts of gain or loss on the disposition of certain items of partnership property, the partnership must prepare and maintain special entries on its books. However, in many cases, partnership returns are prepared using computer software that can prepare and maintain these special entries after the initial year.

The IRS and the Treasury Department are not aware of any federal rules that may duplicate, overlap, or conflict with the rule.

As an alternative to the disclosure described above, the IRS and the Treasury Department considered, but rejected, a rule that would have required the partners, and not the partnerships, to make the basis adjustments and to determine the effects of the basis adjustments on the partners' distributive shares. This alternative was rejected because the IRS and the Treasury Department believe that partnerships generally have better access to the information necessary to report section 743 basis adjustments properly. To

require the partners rather than the partnerships to bear the burden of reporting would require the partnerships to provide the partners with significant amounts of information not otherwise needed by the partners. There are no known alternative rules that are less burdensome to the partnerships and their partners but that accomplish the purpose of the statute.

Finally, because partners, rather than partnerships, are required to report basis adjustments under section 732(d), the final regulations require partnerships to provide transferees with such information as is necessary for the transferees properly to compute basis adjustments made under section 732(d). This information must be provided if a transferee notifies a partnership that it plans to make the election under section 732(d) or if a partnership makes a distribution subject to the mandatory application of section 732(d). The IRS and the Treasury Department believe that this requirement will apply under limited circumstances to a small percentage of partnerships.

Drafting Information

The principal author of these regulations is Matthew Lay of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.732–1 also issued under 26 U.S.C. 732.

Section 1.732–2 also issued under 26 U.S.C. 732.

Section 1.734–1 also issued under 26 U.S.C. 734.

Section 1.743–1 also issued under 26 U.S.C. 743.

Section 1.751–1 also issued under 26 U.S.C. 751.

Section 1.755–1 also issued under 26 U.S.C. 755. * * *

Section 1.1017–1 also issued under 26 U.S.C. 1017. * * *

Par. 2. Section 1.732–1 is amended as follows:

1. Revise paragraph (c).
2. Revise paragraph (d)(1)(ii).
3. Revise the last sentence of paragraph (d)(1)(v).
4. Revise paragraph (d)(1)(vi).
5. Revise paragraph (d)(4)(iii).
6. Remove the flush text and *Examples 1* and *2* following paragraph (d)(4)(iii).
7. Add paragraph (d)(5).

The additions and revisions read as follows:

§ 1.732–1 Basis of distributed property other than money.

* * * * *

(c) *Allocation of basis among properties distributed to a partner*—(1) *General rule*—(i) *Unrealized receivables and inventory items.* The basis to be allocated to properties distributed to a partner under section 732(a)(2) or (b) is allocated first to any unrealized receivables (as defined in section 751(c)) and inventory items (as defined in section 751(d)(2)) in an amount equal to the adjusted basis of each such property to the partnership immediately before the distribution. If the basis to be allocated is less than the sum of the adjusted bases to the partnership of the distributed unrealized receivables and inventory items, the adjusted basis of the distributed property must be decreased in the manner provided in paragraph (c)(2)(i) of this section.

(ii) *Other distributed property.* Any basis not allocated to unrealized receivables or inventory items under paragraph (c)(1)(i) of this section is allocated to any other property distributed to the partner in the same transaction by assigning to each distributed property an amount equal to the adjusted basis of the property to the partnership immediately before the distribution. However, if the sum of the adjusted bases to the partnership of such other distributed property does not equal the basis to be allocated among the distributed property, any increase or decrease required to make the amounts equal is allocated among the distributed property as provided in paragraph (c)(2) of this section.

(2) *Adjustment to basis allocation*—(i) *Decrease in basis.* Any decrease to the basis of distributed property required under paragraph (c)(1) of this section is allocated first to distributed property with unrealized depreciation in proportion to each property's respective amount of unrealized depreciation before any decrease (but only to the extent of each property's unrealized depreciation). If the required decrease exceeds the amount of unrealized depreciation in the distributed property, the excess is allocated to the distributed property in proportion to the adjusted bases of the distributed property, as adjusted pursuant to the immediately preceding sentence.

(ii) *Increase in basis.* Any increase to the basis of distributed property required under paragraph (c)(1)(ii) of this section is allocated first to distributed property (other than unrealized receivables and inventory items) with unrealized appreciation in proportion to each property's respective amount of unrealized appreciation before any increase (but only to the extent of each property's unrealized appreciation). If the required increase exceeds the amount of unrealized appreciation in the distributed property, the excess is allocated to the distributed property (other than unrealized receivables or inventory items) in proportion to the fair market value of the distributed property.

(3) *Unrealized receivables and inventory items.* If the basis to be allocated upon a distribution in liquidation of the partner's entire interest in the partnership is greater than the adjusted basis to the partnership of the unrealized receivables and inventory items distributed to the partner, and if there is no other property distributed to which the excess can be allocated, the distributee partner sustains a capital loss under section 731(a)(2) to the extent of the unallocated basis of the partnership interest.

(4) *Examples.* The provisions of this paragraph (c) are illustrated by the following examples:

Example 1. A is a one-fourth partner in partnership PRS and has an adjusted basis in its partnership interest of $650. PRS distributes inventory items and Assets X and Y to A in liquidation of A's entire partnership interest. The distributed inventory items have a basis to the partnership of $100 and a fair market value of $200. Asset X has an adjusted basis to the partnership of $50 and a fair market value of $400. Asset Y has an adjusted basis to the partnership and a fair market value of $100. Neither Asset X nor Asset Y consists of inventory items or unrealized receivables. Under this paragraph (c), A's basis in its partnership interest is allocated first to the inventory items in an amount equal to their adjusted basis to the partnership. A, therefore, has an adjusted basis in the inventory items of $100. The remaining basis, $550, is allocated to the distributed property first in an amount equal to the property's adjusted basis to the partnership. Thus, Asset X is allocated $50 and Asset Y is allocated $100. Asset X is then allocated $350, the amount of unrealized appreciation in Asset

X. Finally, the remaining basis, $50, is allocated to Assets X and Y in proportion to their fair market values: $40 to Asset X (400/500 × $50), and $10 to Asset Y (100/500 × $50). Therefore, after the distribution, A has an adjusted basis of $440 in Asset X and $110 in Asset Y.

Example 2. B is a one-fourth partner in partnership PRS and has an adjusted basis in its partnership interest of $200. PRS distributes Asset X and Asset Y to B in liquidation of its entire partnership interest. Asset X has an adjusted basis to the partnership and fair market value of $150. Asset Y has an adjusted basis to the partnership of $150 and a fair market value of $50. Neither of the assets consists of inventory items or unrealized receivables. Under this paragraph (c), B's basis is first assigned to the distributed property to the extent of the partnership's basis in each distributed property. Thus, Asset X and Asset Y are each assigned $150. Because the aggregate adjusted basis of the distributed property, $300, exceeds the basis to be allocated, $200, a decrease of $100 in the basis of the distributed property is required. Assets X and Y have unrealized depreciation of zero and $100, respectively. Thus, the entire decrease is allocated to Asset Y. After the distribution, B has an adjusted basis of $150 in Asset X and $50 in Asset Y.

Example 3. C, a partner in partnership PRS, receives a distribution in liquidation of its entire partnership interest of $6,000 cash, inventory items having an adjusted basis to the partnership of $6,000, and real property having an adjusted basis to the partnership of $4,000. C's basis in its partnership interest is $9,000. The cash distribution reduces C's basis to $3,000, which is allocated entirely to the inventory items. The real property has a zero basis in C's hands. The partnership bases not carried over to C for the distributed properties are lost unless an election under section 754 is in effect requiring the partnership to adjust the bases of remaining partnership properties under section 734(b).

Example 4. Assume the same facts as in *Example 3* of this paragraph except C receives a distribution in liquidation of its entire partnership interest of $1,000 cash and inventory items having a basis to the partnership of $6,000. The cash distribution reduces C's basis to $8,000, which can be allocated only to the extent of $6,000 to the inventory items. The remaining $2,000 basis, not allocable to the distributed property, constitutes a capital loss to partner C under section 731(a)(2). If the election under section 754 is in effect, see section 734(b) for adjustment of the basis of undistributed partnership property.

(5) *Effective date.* This paragraph (c) applies to distributions of property from a partnership that occur on or after December 15, 1999.

(d) * * *

(1) * * *

(ii) Where an election under section 754 is in effect, see section 743(b) and §§ 1.743–1 and 1.732–2.

* * * * *

(v) * * * (For a shift of transferee's basis adjustment under section 743(b) to like property, see § 1.743–1(g).)

(vi) The provisions of this paragraph (d)(1) may be illustrated by the following example:

Example. (i) Transferee partner, T, purchased a one-fourth interest in partnership PRS for $17,000. At the time T purchased the partnership interest, the election under section 754 was not in effect and the partnership inventory had a basis to the partnership of $14,000 and a fair market value of $16,000. T's purchase price reflected $500 of this difference. Thus, $4,000 of the $17,000 paid by T for the partnership interest was attributable to T's share of partnership inventory with a basis of $3,500. Within 2 years after T acquired the partnership interest, T retired from the partnership and received in liquidation of its entire partnership interest the following property:

	Assets	
	Adjusted basis to PRS	Fair market value
Cash	$1,500	$1,500
Inventory	3,500	4,000
Asset X	2,000	4,000
Asset Y	4,000	5,000

(ii) The fair market value of the inventory received by T was one-fourth of the fair market value of all partnership inventory and was T's share of such property. It is immaterial whether the inventory T received was on hand when T acquired the interest. In accordance with T's election under section 732(d), the amount of T's share of partnership basis that is attributable to partnership inventory is increased by $500 (one-fourth of the $2,000 difference between the fair market value of the property, $16,000, and its $14,000 basis to the partnership at the time T purchased its interest). This adjustment under section 732(d) applies only for purposes of distributions to T, and not for purposes of partnership depreciation, depletion, or gain or loss on disposition. Thus, the amount to be allocated among the properties received by T in the liquidating distribution is $15,500 ($17,000, T's basis for the partnership interest, reduced by the amount of cash received, $1,500). This amount is allocated as follows: The basis of the inventory items received is $4,000, consisting of the $3,500 common partnership basis, plus the basis adjustment of $500 which T would have had under section 743(b). The remaining basis of $11,500 ($15,500 minus $4,000) is allocated among the remaining property distributed to T by assigning to each property the adjusted basis to the partnership of such property and adjusting that basis by any required increase or decrease. Thus, the adjusted basis to T of Asset X is $5,111 ($2,000, the adjusted basis of Asset X to the partnership, plus $2,000, the amount of unrealized appreciation in Asset X, plus $1,111 ($4,000/$9,000 multiplied by $2,500)). Similarly, the adjusted basis of Asset Y to T is $6,389 ($4,000, the adjusted basis of Asset Y to the partnership, plus $1,000, the amount of unrealized appreciation in Asset Y, plus, $1,389 ($5,000/$9,000 multiplied by $2,500)).

* * * * *

(4) * * *

(iii) A basis adjustment under section 743(b) would change the basis to the transferee partner of the property actually distributed.

(5) *Required statements.* If a transferee partner notifies a partnership that it plans to make the election under section 732(d) under paragraph (d)(3) of this section, or if a partnership makes a distribution to which paragraph (d)(4) of this section applies, the partnership must provide the transferee with such information as is necessary for the transferee properly to compute the transferee's basis adjustments under section 732(d).

* * * * *

Par. 3. Section 1.732–2 is amended by revising the sentence at the end of the *Example* in paragraph (b) to read as follows:

§ 1.732–2 Special partnership basis of distributed property.

* * * * *

(b) * * *

Example. * * * See § 1.743–1(g).

* * * * *

Par. 4. In § 1.734–1, paragraph (e) is added to read as follows:

§ 1.734–1 Optional adjustment to basis of undistributed partnership property.

* * * * *

(e) *Recovery of adjustments to basis of partnership property*—(1) *Increases in basis.* For purposes of section 168, if the basis of a partnership's recovery property is increased as a result of the distribution of property to a partner, then the increased portion of the basis

must be taken into account as if it were newly-purchased recovery property placed in service when the distribution occurs. Consequently, any applicable recovery period and method may be used to determine the recovery allowance with respect to the increased portion of the basis. However, no change is made for purposes of determining the recovery allowance under section 168 for the portion of the basis for which there is no increase.

(2) *Decreases in basis.* For purposes of section 168, if the basis of a partnership's recovery property is decreased as a result of the distribution of property to a partner, then the decrease in basis must be accounted for over the remaining recovery period of the property beginning with the recovery period in which the basis is decreased.

(3) *Effective date.* This paragraph (e) applies to distributions of property from a partnership that occur on or after December 15, 1999.

Par. 5. Section 1.743–1 is revised to read as follows:

§ 1.743–1 Optional adjustment to basis of partnership property.

(a) *Generally.* The basis of partnership property is adjusted as a result of the transfer of an interest in a partnership by sale or exchange or on the death of a partner only if the election provided by section 754 (relating to optional adjustments to the basis of partnership property) is in effect with respect to the partnership. Whether or not the election provided in section 754 is in effect, the basis of partnership property is not adjusted as the result of a contribution of property, including money, to the partnership.

(b) *Determination of adjustment.* In the case of the transfer of an interest in a partnership, either by sale or exchange or as a result of the death of a partner, a partnership that has an election under section 754 in effect—

(1) Increases the adjusted basis of partnership property by the excess of the transferee's basis for the transferred partnership interest over the transferee's share of the adjusted basis to the partnership of the partnership's property; or

(2) Decreases the adjusted basis of partnership property by the excess of the transferee's share of the adjusted basis to the partnership of the partnership's property over the transferee's basis for the transferred partnership interest.

(c) *Determination of transferee's basis in the transferred partnership interest.* In the case of the transfer of a partnership interest by sale or exchange or as a result of the death of a partner, the transferee's basis in the transferred partnership interest is determined under section 742 and § 1.742–1. See also section 752 and §§ 1.752–1 through 1.752–5.

(d) *Determination of transferee's share of the adjusted basis to the partnership of the partnership's property*—(1) *Generally.* A transferee's share of the adjusted basis to the partnership of partnership property is equal to the sum of the transferee's interest as a partner in the partnership's previously taxed capital, plus the transferee's share of partnership liabilities. Generally, a transferee's interest as a partner in the partnership's previously taxed capital is equal to—

(i) The amount of cash that the transferee would receive on a liquidation of the partnership following the hypothetical transaction, as defined in paragraph (d)(2) of this section (to the extent attributable to the acquired partnership interest); increased by

(ii) The amount of tax loss (including any remedial allocations under § 1.704–3(d)), that would be allocated to the transferee from the hypothetical transaction (to the extent attributable to the acquired partnership interest); and decreased by

(iii) The amount of tax gain (including any remedial allocations under § 1.704–3(d)), that would be allocated to the transferee from the hypothetical transaction (to the extent attributable to the acquired partnership interest).

(2) *Hypothetical transaction defined.* For purposes of paragraph (d)(1) of this section, the hypothetical transaction means the disposition by the partnership of all of the partnership's assets, immediately after the transfer of the partnership interest, in a fully taxable transaction for cash equal to the fair market value of the assets.

(3) *Examples.* The provisions of this paragraph (d) are illustrated by the following examples:

Example 1. (i) A is a member of partnership PRS in which the partners have equal interests in capital and profits. The partnership has made an election under section 754, relating to the optional adjustment to the basis of partnership property. A sells its interest to T for $22,000. The balance sheet of the partnership at the date of sale shows the following:

	Assets	
	Adjusted basis	Fair market value
Cash	$5,000	$5,000
Accounts receivable	10,000	10,000
Inventory	20,000	21,000
Depreciable assets	20,000	40,000
Total	55,000	76,000

	Liabilities and Capital	
	Adjusted per books	Fair market value
Liabilities	$10,000	$10,000
Capital:		
A	15,000	22,000
B	15,000	22,000
C	15,000	22,000
Total	55,000	76,000

(ii) The amount of the basis adjustment under section 743(b) is the difference between the basis of T's interest in the partnership and T's share of the adjusted basis to the partnership of the partnership's property. Under section 742, the basis of T's interest is $25,333 (the cash paid for A's interest, $22,000, plus $3,333, T's share of partnership liabilities). T's interest in the partnership's previously taxed capital is $15,000 ($22,000, the amount of cash T would receive if PRS liquidated immediately after the hypothetical transaction, decreased by $7,000, the amount of tax gain allocated to T from the hypothetical transaction). T's share of the adjusted basis to the partnership of the partnership's property is $18,333 ($15,000 share of previously taxed capital, plus $3,333 share of the partnership's liabilities). The amount of the basis adjustment under section 743(b) to partnership property therefore, is $7,000, the difference between $25,333 and $18,333.

Example 2. A, B, and C form partnership PRS, to which A contributes land (Asset 1) with a fair market value of $1,000 and an adjusted basis to A of $400, and B and C each contribute $1,000 cash. Each partner has $1,000 credited to it on the books of the partnership as its capital contribution. The partners share in profits equally. During the partnership's first taxable year, Asset 1 appreciates in value to $1,300. A sells its one-third interest in the partnership to T for $1,100, when an election under section 754 is in effect. The amount of tax gain that would be allocated to T from the hypothetical transaction is $700 ($600 section 704(c) built-in gain, plus one-third of the additional gain). Thus, T's interest in the partnership's previously taxed capital is $400 ($1,100, the amount of cash T would receive if PRS liquidated immediately after the hypothetical transaction, decreased by $700, T's share of gain from the hypothetical transaction). The amount of T's basis adjustment under section 743(b) to partnership property is $700 (the excess of $1,100, T's cost basis for its interest, over $400, T's share of the adjusted basis to the partnership of partnership property).

(e) *Allocation of basis adjustment.* For the allocation of the basis adjustment under this section among the individual items of partnership property, see section 755 and the regulations thereunder.

(f) *Subsequent transfers.* Where there has been more than one transfer of a partnership interest, a transferee's basis adjustment is determined without regard to any prior transferee's basis adjustment. In the case of a gift of an interest in a partnership, the donor is treated as transferring, and the donee as receiving, that portion of the basis adjustment attributable to the gifted partnership interest. The provisions of this paragraph (f) are illustrated by the following example:

Example. (i) A, B, and C form partnership PRS. A and B each contribute $1,000 cash, and C contributes land with a basis and fair market value of $1,000. When the land has appreciated in value to $1,300, A sells its interest to T1 for $1,100 (one-third of $3,300, the fair market value of the partnership property). An election under section 754 is in effect; therefore, T1 has a basis adjustment under section 743(b) of $100.

(ii) After the land has further appreciated in value to $1,600, T1 sells its interest to T2 for $1,200 (one-third of $3,600, the fair market value of the partnership property). T2 has a basis adjustment under section 743(b) of $200. This amount is determined without regard to any basis adjustment under section 743(b) that T1 may have had in the partnership assets.

(iii) During the following year, T2 makes a gift to T3 of fifty percent of T2's interest in PRS. At the time of the transfer, T2 has a $200 basis adjustment under section 743(b). T2 is treated as transferring $100 of the basis adjustment to T3 with the gift of the partnership interest.

(g) *Distributions*—(1) *Distribution of adjusted property to the transferee*—(i) *Coordination with section 732.* If a partnership distributes property to a transferee and the transferee has a basis adjustment for the property, the basis adjustment is taken into account under section 732. See § 1.732–2(b).

(ii) *Coordination with section 734.* For certain adjustments to the common basis of remaining partnership property after the distribution of adjusted property to a transferee, see § 1.734–2(b).

(2) *Distribution of adjusted property to another partner*—(i) *Coordination with section 732.* If a partner receives a distribution of property with respect to which another partner has a basis adjustment, the distributee does not take the basis adjustment into account under section 732.

(ii) *Reallocation of basis.* A transferee with a basis adjustment in property that is distributed to another partner reallocates the basis adjustment among the remaining items of partnership property under § 1.755–1(c).

(3) *Distributions in complete liquidation of a partner's interest.* If a transferee receives a distribution of property (whether or not the transferee has a basis adjustment in such property) in liquidation of its interest in the partnership, the adjusted basis to the partnership of the distributed property immediately before the distribution includes the transferee's basis adjustment for the property in which the transferee relinquished an interest (either because it remained in the partnership or was distributed to another partner). Any basis adjustment for property in which the transferee is deemed to relinquish its interest is reallocated among the properties distributed to the transferee under § 1.755–1(c).

(4) *Coordination with other provisions.* The rules of sections 704(c)(1)(B), 731, 737, and 751 apply before the rules of this paragraph (g).

(5) *Example.* The provisions of this paragraph (g) are illustrated by the following example:

Example. (i) A, B, and C are equal partners in partnership PRS. Each partner originally contributed $10,000 in cash, and PRS used the contributions to purchase five nondepreciable capital assets. PRS has no liabilities. After five years, PRS's balance sheet appears as follows:

	Assets	
	Adjusted basis	Fair market value
Asset 1	$10,000	$10,000
Asset 2	4,000	6,000
Asset 3	6,000	6,000
Asset 4	7,000	4,000
Asset 5	3,000	13,000
Total	30,000	39,000

	Capital	
	Adjusted per books	Fair market value
Partner A	$10,000	$13,000
Partner B	10,000	13,000
Partner C	10,000	13,000
Total	30,000	39,000

(ii) A sells its interest to T for $13,000 when PRS has an election in effect under section 754. T receives a basis adjustment under section 743(b) in the partnership property that is equal to $3,000 (the excess of T's basis in the partnership interest, $13,000, over T's share of the adjusted basis to the partnership of partnership property, $10,000). The basis adjustment is allocated under section 755, and the partnership's balance sheet appears as follows:

	Assets		
	Adjusted basis	Fair market value	Basis adjustment
Asset 1	$10,000	$10,000	$0.00
Asset 2	4,000	6,000	666.67
Asset 3	6,000	6,000	0.00
Asset 4	7,000	4,000	(1,000.00)
Asset 5	3,000	13,000	3,333.33
Total	30,000	39,000	3,000.00

	Capital		
	Adjusted per books	Fair market value	Special basis
Partner T	$10,000	$13,000	$3,000
Partner B	10,000	13,000	0
Partner C	10,000	13,000	0
Total	30,000	39,000	3,000

(iii) Assume that PRS distributes Asset 2 to T in partial liquidation of T's interest in the partnership. T has a basis adjustment under section 743(b) of $666.67 in Asset 2. Under paragraph (g)(1)(i) of this section, T takes the basis adjustment into account under section 732. Therefore, T will have a basis in Asset 2 of $4,666.67 following the distribution.

(iv) Assume instead that PRS distributes Asset 5 to C in complete liquidation of C's interest in PRS. T has a basis adjustment under section 743(b) of $3,333.33 in Asset 5. Under paragraph (g)(2)(i) of this section, C does not take T's basis adjustment into account under section 732. Therefore, the partnership's basis for purposes of sections 732 and 734 is $3,000. Under paragraph (g)(2)(ii) of this section, T's $3,333.33 basis adjustment is reallocated among the remaining partnership assets under § 1.755–1(c).

(v) Assume instead that PRS distributes Asset 5 to T in complete liquidation of its interest in PRS. Under paragraph (g)(3) of this section, immediately prior to the distribution of Asset 5 to T, PRS must adjust the basis of Asset 5. Therefore, immediately prior to the distribution, PRS's basis in Asset 5 is equal to $6,000, which is the sum of (A) $3,000, PRS's common basis in Asset 5, plus (B) $3,333.33, T's basis adjustment to Asset 5, plus (C) ($333.33), the sum of T's basis adjustments in Assets 2 and 4. For purposes of sections 732 and 734, therefore, PRS will be treated as having a basis in Asset 5 equal to $6,000.

(h) *Contributions of adjusted property*—(1) *Section 721(a) transactions.* If, in a transaction described in section 721(a), a partnership (the upper tier) contributes to another partnership (the lower tier) property with respect to which a basis adjustment has been made, the basis adjustment is treated as contributed to the lower-tier partnership, regardless of whether the lower-tier partnership makes a section 754 election. The lower tier's basis in the contributed assets and the upper tier's basis in the partnership interest received in the transaction are determined with reference to the basis adjustment. However, that portion of the basis of the upper tier's interest in the lower tier attributable to the basis adjustment must be segregated and allocated solely to the transferee partner for whom the basis adjustment was made. Similarly, that portion of the lower tier's basis in its assets attributable to the basis adjustment must be segregated and allocated solely to the upper tier and the transferee. A partner with a basis adjustment in property held by a partnership that terminates under section 708(b)(1)(B) will continue to have the same basis adjustment with respect to property deemed contributed by the terminated partnership to the new partnership under § 1.708–1(b)(1)(iv), regardless of whether the new partnership makes a section 754 election.

(2) *Section 351 transactions*—(i) *Basis in transferred property.* A corporation's adjusted tax basis in property transferred to the corporation by a partnership in a transaction described in section 351 is determined with reference to any basis adjustments to the property under section 743(b) (other than any basis adjustment that reduces a partner's gain under paragraph (h)(2)(ii) of this section).

(ii) *Partnership gain.* The amount of gain, if any, recognized by the partnership on a transfer of property by the partnership to a corporation in a transfer described in section 351 is determined without reference to any basis adjustment to the transferred property under section 743(b). The amount of gain, if any, recognized by the partnership on the transfer that is allocated to a partner with a basis adjustment in the transferred property is

adjusted to reflect the partner's basis adjustment in the transferred property.

(iii) *Basis in stock.* The partnership's adjusted tax basis in stock received from a corporation in a transfer described in section 351 is determined without reference to the basis adjustment in property transferred to the corporation in the section 351 exchange. A partner with a basis adjustment in property transferred to the corporation, however, has a basis adjustment in the stock received by the partnership in the section 351 exchange in an amount equal to the partner's basis adjustment in the transferred property, reduced by any basis adjustment that reduced the partner's gain under paragraph (h)(2)(ii) of this section.

(iv) *Example.* The following example illustrates the principles of this paragraph (h):

Example. (i) A, B, and C are equal partners in partnership PRS. The partnership's only asset, Asset 1, has an adjusted tax basis of $60 and a fair market value of $120. Asset 1 is a nondepreciable capital asset and is not section 704(c) property. A has a basis in its partnership interest of $40, and a positive section 743(b) adjustment of $20 in Asset 1. In a transaction to which section 351 applies, PRS contributes Asset 1 to X, a corporation, in exchange for $15 in cash and X stock with a fair market value of $105.

(ii) Under paragraph (h)(2)(ii) of this section, PRS realizes $60 of gain on the transfer of Asset 1 to X ($120, its amount realized, minus $60, its adjusted basis), but recognizes only $15 of that gain under section 351(b)(1). Of this amount, $5 is allocated to each partner. A must use $5 of its basis adjustment in Asset 1 to offset A's share of PRS's gain. Under paragraph (h)(2)(iii) of this section, PRS's basis in the stock received from X is $60. However, A has a basis adjustment in the stock received by PRS equal to $15 (its basis adjustment in Asset 1, $20, reduced by the portion of the adjustment which reduced A's gain, $5). Under paragraph (h)(2)(i) of this section, X's basis in Asset 1 equals $75 (PRS's common basis in the asset, $60, plus A's basis adjustment under section 743(b), $20, less the portion of the adjustment which reduced A's gain, $5).

(i) [Reserved].

(j) *Effect of basis adjustment*—(1) *In general.* The basis adjustment constitutes an adjustment to the basis of partnership property with respect to the transferee only. No adjustment is made to the common basis of partnership property. Thus, for purposes of calculating income, deduction, gain, and loss, the transferee will have a special basis for those partnership properties the bases of which are adjusted under section 743(b) and this section. The adjustment to the basis of partnership property under section 743(b) has no effect on the partnership's computation of any item under section 703.

(2) *Computation of partner's distributive share of partnership items.* The partnership first computes its items of income, deduction, gain, or loss at the partnership level under section 703. The partnership then allocates the partnership items among the partners, including the transferee, in accordance with section 704, and adjusts the partners' capital accounts accordingly. The partnership then adjusts the transferee's distributive share of the items of partnership income, deduction, gain, or loss, in accordance with paragraphs (j)(3) and (4) of this section, to reflect the effects of the transferee's basis adjustment under section 743(b). These adjustments to the transferee's distributive shares must be reflected on Schedules K and K–1 of the partnership's return (Form 1065). These adjustments to the transferee's distributive shares do not affect the transferee's capital account.

(3) *Effect of basis adjustment in determining items of income, gain, or loss*—(i) *In general.* The amount of a transferee's income, gain, or loss from the sale or exchange of a partnership asset in which the transferee has a basis adjustment is equal to the transferee's share of the partnership's gain or loss from the sale of the asset (including any remedial allocations under § 1.704–3(d)), minus the amount of the transferee's positive basis adjustment for the partnership asset (determined by taking into account the recovery of the basis adjustment under paragraph (j)(4)(i)(B) of this section) or plus the amount of the transferee's negative basis adjustment for the partnership asset (determined by taking into the account the recovery of the basis adjustment under paragraph (j)(4)(ii)(B) of this section).

(ii) *Examples.* The following examples illustrate the principles of this paragraph (j)(3):

Example 1. A and B form equal partnership PRS. A contributes nondepreciable property with a fair market value of $50 and an adjusted tax basis of $100. PRS will use the traditional allocation method under § 1.704–3(b). B contributes $50 cash. A sells its interest to T for $50. PRS has an election in effect to adjust the basis of partnership property under section 754. T receives a negative $50 basis adjustment under section 743(b) that, under section 755, is allocated to the nondepreciable property. PRS then sells the property for $60. PRS recognizes a book gain of $10 (allocated equally between T and B) and a tax loss of $40. T will receive an allocation of $40 of tax loss under the principles of section 704(c). However, because T has a negative $50 basis adjustment in the nondepreciable property, T recognizes a $10 gain from the partnership's sale of the property.

Example 2. A and B form equal partnership PRS. A contributes nondepreciable property with a fair market value of $100 and an adjusted tax basis of $50. B contributes $100 cash. PRS will use the traditional allocation method under § 1.704–3(b). A sells its interest to T for $100. PRS has an election in effect to adjust the basis of partnership property under section 754. Therefore, T receives a $50 basis adjustment under section 743(b) that, under section 755, is allocated to the nondepreciable property. PRS then sells the nondepreciable property for $90. PRS recognizes a book loss of $10 (allocated equally between T and B) and a tax gain of $40. T will receive an allocation of the entire $40 of tax gain under the principles of section 704(c). However, because T has a $50 basis adjustment in the property, T recognizes a $10 loss from the partnership's sale of the property.

Example 3. A and B form equal partnership PRS. PRS will make allocations under section 704(c) using the remedial allocation method described in § 1.704–3(d). A contributes nondepreciable property with a fair market value of $100 and an adjusted tax basis of $150. B contributes $100 cash. A sells its partnership interest to T for $100. PRS has an election in effect to adjust the basis of partnership property under section 754. T receives a negative $50 basis adjustment under section 743(b) that, under section 755, is allocated to the property. The partnership then sells the property for $120. The partnership recognizes a $20 book gain and a $30 tax loss. The book gain will be allocated equally between the partners. The entire $30 tax loss will be allocated to T under the principles of section 704(c). To match its $10 share of book gain, B will be allocated $10 of remedial gain, and T will be allocated an offsetting $10 of remedial loss. T was allocated a total of $40 of tax loss with respect to the property. However, because T has a negative $50 basis adjustment to the property, T recognizes a $10 gain from the partnership's sale of the property.

(4) *Effect of basis adjustment in determining items of deduction*—(i) *Increases*—(A) *Additional deduction.* The amount of any positive basis adjustment that is recovered by the transferee in any year is added to the transferee's distributive share of the partnership's depreciation or amortization deductions for the year. The basis adjustment is adjusted under section 1016(a)(2) to reflect the recovery of the basis adjustment.

(B) *Recovery period*—(*1*) *In general.* Except as provided in paragraph (j)(4)(i)(B)(*2*) of this section, for purposes of section 168, if the basis of a partnership's recovery property is increased as a result of the transfer of a partnership interest, then the increased portion of the basis is taken into account as if it were newly-purchased recovery

property placed in service when the transfer occurs. Consequently, any applicable recovery period and method may be used to determine the recovery allowance with respect to the increased portion of the basis. However, no change is made for purposes of determining the recovery allowance under section 168 for the portion of the basis for which there is no increase.

(*2*) *Remedial allocation method.* If a partnership elects to use the remedial allocation method described in § 1.704–3(d) with respect to an item of the partnership's recovery property, then the portion of any increase in the basis of the item of the partnership's recovery property under section 743(b) that is attributable to section 704(c) built-in gain is recovered over the remaining recovery period for the partnership's excess book basis in the property as determined in the final sentence of § 1.704–3(d)(2). Any remaining portion of the basis increase is recovered under paragraph (j)(4)(i)(B)(*1*) of this section.

(C) *Examples.* The provisions of this paragraph (j)(4)(i) are illustrated by the following examples:

Example 1. (i) A, B, and C are equal partners in partnership PRS, which owns Asset 1, an item of depreciable property that has a fair market value in excess of its adjusted tax basis. C sells its interest in PRS to T while PRS has an election in effect under section 754. PRS, therefore, increases the basis of Asset 1 with respect to T.

(ii) Assume that in the year following the transfer of the partnership interest to T, T's distributive share of the partnership's common basis depreciation deductions from Asset 1 is $1,000. Also assume that, under paragraph (j)(4)(i)(B) of this section, the amount of the basis adjustment under section 743(b) that T recovers during the year is $500. The total amount of depreciation deductions from Asset 1 reported by T is equal to $1,500.

Example 2. (i) A and B form equal partnership PRS. A contributes property with an adjusted basis of $100,000 and a fair market value of $500,000. B contributes $500,000 cash. When PRS is formed, the property has five years remaining in its recovery period. The partnership's adjusted basis of $100,000 will, therefore, be recovered over the five years remaining in the property's recovery period. PRS elects to use the remedial allocation method under § 1.704–3(d) with respect to the property. If PRS had purchased the property at the time of the partnership's formation, the basis of the property would have been recovered over a 10-year period. The $400,000 of section 704(c) built-in gain will, therefore, be amortized under § 1.704-3(d) over a 10-year period beginning at the time of the partnership's formation.

(ii)(A) Except for the depreciation deductions, PRS's expenses equal its income in each year of the first two years commencing with the year the partnership is formed. After two years, A's share of the adjusted basis of partnership property is $120,000, while B's is $440,000:

	Capital accounts			
	A	B		
	Book	Tax	Book	Tax
Initial Contribution	$500,000	$100,000	$500,000	$500,000
Depreciation Year 1	(30,000)	.....	(30,000)	(20,000)
Remedial	.....	10,000	.....	(10,000)
	470,000	110,000	470,000	470,000
Depreciation Year 2	(30,000)	.....	(30,000)	(20,000)
Remedial	.....	10,000	.....	(10,000)
	440,000	120,000	440,000	440,000

(B) A sells its interest in PRS to T for its fair market value of $440,000. A valid election under section 754 is in effect with respect to the sale of the partnership interest. Accordingly, PRS makes an adjustment, pursuant to section 743(b), to increase the basis of partnership property. Under section 743(b), the amount of the basis adjustment is equal to $320,000. Under section 755, the entire basis adjustment is allocated to the property.

(iii) At the time of the transfer, $320,000 of section 704(c) built-in gain from the property was still reflected on the partnership's books, and all of the basis adjustment is attributable to section 704(c) built-in gain. Therefore, the basis adjustment will be recovered over the remaining recovery period for the section 704(c) built-in gain under § 1.704–3(d).

(ii) *Decreases*—(A) *Reduced deduction.* The amount of any negative basis adjustment allocated to an item of depreciable or amortizable property that is recovered in any year first decreases the transferee's distributive share of the partnership's depreciation or amortization deductions from that item of property for the year. If the amount of the basis adjustment recovered in any year exceeds the transferee's distributive share of the partnership's depreciation or amortization deductions from the item of property, then the transferee's distributive share of the partnership's depreciation or amortization deductions from other items of partnership property is decreased. The transferee then recognizes ordinary income to the extent of the excess, if any, of the amount of the basis adjustment recovered in any year over the transferee's distributive share of the partnership's depreciation or amortization deductions from all items of property.

(B) *Recovery period.* For purposes of section 168, if the basis of an item of a partnership's recovery property is decreased as the result of the transfer of an interest in the partnership, then the decrease is recovered over the remaining useful life of the item of the partnership's recovery property. The portion of the decrease that is recovered in any year during the recovery period is equal to the product of—

(*1*) The amount of the decrease to the item's adjusted basis (determined as of the date of the transfer); multiplied by

(*2*) A fraction, the numerator of which is the portion of the adjusted basis of the item recovered by the partnership in that year, and the denominator of which is the adjusted basis of the item on the date of the transfer (determined prior to any basis adjustments).

(C) *Examples.* The provisions of this paragraph (j)(4)(ii) are illustrated by the following examples:

Example 1. (i) A, B, and C are equal partners in partnership PRS, which owns Asset 2, an item of depreciable property that has a fair market value that is less than its adjusted tax basis. C sells its interest in PRS to T while PRS has an election in effect under section 754. PRS, therefore, decreases the basis of Asset 2 with respect to T.

(ii) Assume that in the year following the transfer of the partnership interest to T, T's distributive share of the partnership's common basis depreciation deductions from Asset 2 is $1,000. Also assume that, under paragraph (j)(4)(ii)(B) of this section, the amount of the basis adjustment under section 743(b) that T recovers during the year is $500. The total amount of depreciation

deductions from Asset 2 reported by T is equal to $500.

Example 2. (i) A and B form equal partnership PRS. A contributes property with an adjusted basis of $100,000 and a fair market value of $50,000. B contributes $50,000 cash. When PRS is formed, the property has five years remaining in its recovery period. The partnership's adjusted basis of $100,000 will, therefore, be recovered over the five years remaining in the property's recovery period. PRS uses the traditional allocation method under § 1.704–3(b) with respect to the property. As a result, B will receive $5,000 of depreciation deductions from the property in each of years 1–5, and A, as the contributing partner, will receive $15,000 of depreciation deductions in each of these years.

(ii) Except for the depreciation deductions, PRS's expenses equal its income in each of the first two years commencing with the year the partnership is formed. After two years, A's share of the adjusted basis of partnership property is $70,000, while B's is $40,000. A sells its interest in PRS to T for its fair market value of $40,000. A valid election under section 754 is in effect with respect to the sale of the partnership interest. Accordingly, PRS makes an adjustment, pursuant to section 743(b), to decrease the basis of partnership property. Under section 743(b), the amount of the adjustment is equal to ($30,000). Under section 755, the entire adjustment is allocated to the property.

(iii) The basis of the property at the time of the transfer of the partnership interest was $60,000. In each of years 3 through 5, the partnership will realize depreciation deductions of $20,000 from the property. Thus, one third of the negative basis adjustment ($10,000) will be recovered in each of years 3 through 5. Consequently, T will be allocated, for tax purposes, depreciation of $15,000 each year from the partnership and will recover $10,000 of its negative basis adjustment. Thus, T's net depreciation deduction from the partnership in each year is $5,000.

Example 3. (i) A, B, and C are equal partners in partnership PRS, which owns Asset 2, an item of depreciable property that has a fair market value that is less than its adjusted tax basis. C sells its interest in PRS to T while PRS has an election in effect under section 754. PRS, therefore, decreases the basis of Asset 2 with respect to T.

(ii) Assume that in the year following the transfer of the partnership interest to T, T's distributive share of the partnership's common basis depreciation deductions from Asset 2 is $500. PRS allocates no other depreciation to T. Also assume that, under paragraph (j)(4)(ii)(B) of this section, the amount of the negative basis adjustment that T recovers during the year is $1,000. T will report $500 of ordinary income because the amount of the negative basis adjustment recovered during the year exceeds T's distributive share of the partnership's common basis depreciation deductions from Asset 2.

(5) *Depletion.* Where an adjustment is made under section 743(b) to the basis of partnership property subject to depletion, any depletion allowance is determined separately for each partner, including the transferee partner, based on the partner's interest in such property. See § 1.702–1(a)(8). For partnerships that hold oil and gas properties that are depleted at the partner level under section 613A(c)(7)(D), the transferee partner (and not the partnership) must make the basis adjustments, if any, required under section 743(b) with respect to such properties. See § 1.613A–3(e)(6)(iv).

(6) *Example.* The provisions of paragraph (j)(5) of this section are illustrated by the following example:

Example. A, B, and C each contributes $5,000 cash to form partnership PRS, which purchases a coal property for $15,000. A, B, and C have equal interests in capital and profits. C subsequently sells its partnership interest to T for $100,000 when the election under section 754 is in effect. T has a basis adjustment under section 743(b) for the coal property of $95,000 (the difference between T's basis, $100,000, and its share of the basis of partnership property, $5,000). Assume that the depletion allowance computed under the percentage method would be $21,000 for the taxable year so that each partner would be entitled to $7,000 as its share of the deduction for depletion. However, under the cost depletion method, at an assumed rate of 10 percent, the allowance with respect to T's one-third interest which has a basis to him of $100,000 ($5,000, plus its basis adjustment of $95,000) is $10,000, although the cost depletion allowance with respect to the one-third interest of A and B in the coal property, each of which has a basis of $5,000, is only $500. For partners A and B, the percentage depletion is greater than cost depletion and each will deduct $7,000 based on the percentage depletion method. However, as to T, the transferee partner, the cost depletion method results in a greater allowance and T will, therefore, deduct $10,000 based on cost depletion. See section 613(a).

(k) *Returns*—(1) *Statement of adjustments*—(i) *In general.* A partnership that must adjust the bases of partnership properties under section 743(b) must attach a statement to the partnership return for the year of the transfer setting forth the name and taxpayer identification number of the transferee as well as the computation of the adjustment and the partnership properties to which the adjustment has been allocated.

(ii) *Special rule.* Where an interest is transferred in a partnership which holds oil and gas properties that are depleted at the partner level under section 613A(c)(7)(D), the transferee must attach a statement to the transferee's return for the year of the transfer, setting forth the computation of the basis adjustment under section 743(b) which is allocable to such properties and the specific properties to which the adjustment has been allocated.

(iii) *Example.* The provisions of paragraph (k)(1)(ii) of this section are illustrated by the following example:

Example. (i) Partnership XYZ owns a single section 613A(c)(7)(D) domestic oil and gas property (Property) and other non-depletable assets. A, a partner in XYZ with an adjusted tax basis in Property of $100 (excluding any prior adjustments under section 743(b)), sells its partnership interest to B for $800 cash. Under § 1.613A–3(e)(6)(iv), A's adjusted basis of $100 in Property carries over to B.

(ii) Under section 755, XYZ determines that Property accounts for 50% of the fair market value of all partnership assets. The remaining 50% of B's purchase price ($400) is attributable to non-depletable property. XYZ must provide a statement to B containing the portion of B's adjusted basis attributable to non-depletable property ($400). Under this paragraph (k)(1), XYZ must report basis adjustments under section 743(b) to non-depletable property. B must report basis adjustments under section 743(b) to Property.

(2) *Requirement that transferee notify partnership*—(i) *Sale or exchange.* A transferee that acquires, by sale or exchange, an interest in a partnership with an election under section 754 in effect for the taxable year of the transfer, must notify the partnership, in writing, within 30 days of the sale or exchange. The written notice to the partnership must be signed under penalties of perjury and must include the names and addresses of the transferee and (if ascertainable) of the transferor, the taxpayer identification numbers of the transferee and (if ascertainable) of the transferor, the relationship (if any) between the transferee and the transferor, the date of the transfer, the amount of any liabilities assumed or taken subject to by the transferee, and the amount of any money, the fair market value of any other property delivered or to be delivered for the transferred interest in the partnership, and any other information necessary for the partnership to compute the transferee's basis.

(ii) *Transfer on death.* A transferee that acquires, on the death of a partner, an interest in a partnership with an election under section 754 in effect for the taxable year of the transfer, must notify the partnership, in writing, within one year of the death of the deceased partner. The written notice to the partnership must be signed under penalties of perjury and must include the names and addresses of the deceased partner and the transferee, the taxpayer identification numbers of the deceased partner and the transferee, the relationship (if any) between the

transferee and the transferor, the deceased partner's date of death, the date on which the transferee became the owner of the partnership interest, the fair market value of the partnership interest on the applicable date of valuation set forth in section 1014, and the manner in which the fair market value of the partnership interest was determined.

(iii) *Nominee reporting.* If a partnership interest is transferred to a nominee which is required to furnish the statement under section 6031(c)(1) to the partnership, the nominee may satisfy the notice requirement contained in this paragraph (k)(2) by providing the statement required under § 1.6031(c)–1T, provided that the statement satisfies all requirements of § 1.6031(c)–1T and this paragraph (k)(2).

(3) *Reliance.* In making the adjustments under section 743(b) and any statement or return relating to such adjustments under this section, a partnership may rely on the written notice provided by a transferee pursuant to paragraph (k)(2) of this section to determine the transferee's basis in a partnership interest. The previous sentence shall not apply if any partner who has responsibility for federal income tax reporting by the partnership has knowledge of facts indicating that the statement is clearly erroneous.

(4) *Partnership not required to make or report adjustments under section 743(b) until it has notice of the transfer.* A partnership is not required to make the adjustments under section 743(b) (or any statement or return relating to those adjustments) with respect to any transfer until it has been notified of the transfer. For purposes of this section, a partnership is notified of a transfer when either—

(i) The partnership receives the written notice from the transferee required under paragraph (k)(2) of this section; or

(ii) Any partner who has responsibility for federal income tax reporting by the partnership has knowledge that there has been a transfer of a partnership interest.

(5) *Effect on partnership of the failure of the transferee to comply.* If the transferee fails to provide the partnership with the written notice required by paragraph (k)(2) of this section, the partnership must attach a statement to its return in the year that the partnership is otherwise notified of the transfer. This statement must set forth the name and taxpayer identification number (if ascertainable) of the transferee. In addition, the following statement must be prominently displayed in capital letters on the first page of the partnership's return for such year, and on the first page of any schedule or information statement relating to such transferee's share of income, credits, deductions, etc.: ''RETURN FILED PURSUANT TO § 1.743–1(k)(5).'' The partnership will then be entitled to report the transferee's share of partnership items without adjustment to reflect the transferee's basis adjustment in partnership property. If, following the filing of a return pursuant to this paragraph (k)(5), the transferee provides the applicable written notice to the partnership, the partnership must make such adjustments as are necessary to adjust the basis of partnership property (as of the date of the transfer) in any amended return otherwise to be filed by the partnership or in the next annual partnership return of income to be regularly filed by the partnership. At such time, the partnership must also provide the transferee with such information as is necessary for the transferee to amend its prior returns to properly reflect the adjustment under section 743(b).

(l) *Effective date.* This section applies to transfers of partnership interests that occur on or after December 15, 1999.

Par. 6. Section 1.751–1 is amended by:

1. Revising paragraphs (a)(2) and (a)(3).
2. Revising paragraph (c)(3).
3. Removing paragraph (c)(4)(x).
4. Adding a sentence at the end of paragraph (f).
5. Revising *Example 1* of paragraph (g).

The addition and revisions read as follows:

§ 1.751–1 Unrealized receivables and inventory items.

* * * * *

(a) * * *

(2) *Determination of gain or loss.* The income or loss realized by a partner upon the sale or exchange of its interest in section 751 property is the amount of income or loss from section 751 property (including any remedial allocations under § 1.704–3(d)) that would have been allocated to the partner (to the extent attributable to the partnership interest sold or exchanged) if the partnership had sold all of its property in a fully taxable transaction for cash in an amount equal to the fair market value of such property (taking into account section 7701(g)) immediately prior to the partner's transfer of the interest in the partnership. Any gain or loss recognized that is attributable to section 751 property will be ordinary gain or loss. The difference between the amount of capital gain or loss that the partner would realize in the absence of section 751 and the amount of ordinary income or loss determined under this paragraph (a)(2) is the transferor's capital gain or loss on the sale of its partnership interest.

(3) *Statement required.* A partner selling or exchanging any part of an interest in a partnership that has any section 751 property at the time of sale or exchange must submit with its income tax return for the taxable year in which the sale or exchange occurs a statement setting forth separately the following information—

(i) The date of the sale or exchange;

(ii) The amount of any gain or loss attributable to the section 751 property; and

(iii) The amount of any gain or loss attributable to capital gain or loss on the sale of the partnership interest.

* * * * *

(c) *Unrealized receivables.* * * *

(3) In determining the amount of the sale price attributable to such unrealized receivables, or their value in a distribution treated as a sale or exchange, full account shall be taken not only of the estimated cost of completing performance of the contract or agreement, but also of the time between the sale or distribution and the time of payment.

* * * * *

(f) * * * The rules contained in paragraphs (a)(2) and (a)(3) of this section apply to transfers of partnership interests that occur on or after December 15, 1999.

(g) * * *

Example 1. (i)(A) A and B are equal partners in personal service partnership PRS. B transfers its interest in PRS to T for $15,000 when PRS's balance sheet (reflecting a cash receipts and disbursements method of accounting) is as follows:

	Assets	
	Adjusted basis	Fair market value
Cash	$3,000	$3,000
Loans Receivable	10,000	10,000
Capital Assets	7,000	5,000
Unrealized Receivables	0	14,000
Total	20,000	32,000

	Liabilities and Capital	
	Adjusted per books	Fair market value
Liabilities	$2,000	$2,000
Capital:		
A	9,000	15,000
B	9,000	15,000
Total	20,000	32,000

(B) None of the assets owned by PRS is section 704(c) property, and the capital assets are nondepreciable. The total amount realized by B is $16,000, consisting of the cash received, $15,000, plus $1,000, B's share of the partnership liabilities assumed by T. See section 752. B's undivided half-interest in the partnership property includes a half-interest in the partnership's unrealized receivables items. B's basis for its partnership interest is $10,000 ($9,000, plus $1,000, B's share of partnership liabilities). If section 751(a) did not apply to the sale, B would recognize $6,000 of capital gain from the sale of the interest in PRS. However, section 751(a) does apply to the sale.

(ii) If PRS sold all of its section 751 property in a fully taxable transaction immediately prior to the transfer of B's partnership interest to T, B would have been allocated $7,000 of ordinary income from the sale of PRS's unrealized receivables. Therefore, B will recognize $7,000 of ordinary income with respect to the unrealized receivables. The difference between the amount of capital gain or loss that the partner would realize in the absence of section 751 ($6,000) and the amount of ordinary income or loss determined under paragraph (a)(2) of this section ($7,000) is the transferor's capital gain or loss on the sale of its partnership interest. In this case, B will recognize a $1,000 capital loss.

* * * * *

Par. 7. Section 1.754–1 is amended as follows:

1. Designate the text following the heading of paragraph (c) as paragraph (c)(1).

2. Add a heading to newly designated paragraph (c)(1).

3. Add paragraph (c)(2).

The additions read as follows:

§ 1.754–1 Time and manner of making election to adjust basis of partnership property.

* * * * *

(c) *Revocation of election*—(1) *In general.* * * *

(2) *Revocations made for first taxable year ending after December 15, 1999.* Notwithstanding paragraph (c)(1) of this section, any partnership having an election in effect under this section for its taxable year that includes December 15, 1999 may revoke such election by attaching a statement to the partnership's return for such year. For the revocation to be valid, the statement must be filed not later than the time prescribed by § 1.6031(a)-1(e) (including extensions thereof) for filing the return for such taxable year, and must set forth the name and address of the partnership revoking the election, be signed by any one of the partners who is authorized to sign the partnership's federal income tax return, and contain a declaration that the partnership revokes its election under section 754 to apply the provisions of section 734(b) and 743(b). In addition, the following statement must be prominently displayed in capital letters on the first page of the partnership's return for such year: ''RETURN FILED PURSUANT TO 1.754–1(c)(2).''

Par. 8. Section 1.755–1 is revised to read as follows:

§ 1.755–1 Rules for allocation of basis.

(a) *Generally.* A partnership that has an election in effect under section 754 must adjust the basis of partnership property under the provisions of section 734(b) and section 743(b) pursuant to the provisions of this section. The basis adjustment is first allocated between the two classes of property described in section 755(b). These classes of property consist of capital assets and section 1231(b) property (capital gain property), and any other property of the partnership (ordinary income property). For purposes of this section, properties and potential gain treated as unrealized receivables under section 751(c) and the regulations thereunder shall be treated as separate assets that are ordinary income property. The portion of the basis adjustment allocated to each class is then allocated among the items within the class. Adjustments under section 743(b) are allocated under paragraph (b) of this section. Adjustments under section 734(b) are allocated under paragraph (c) of this section.

(b) *Adjustments under section 743(b)*—(1) *Generally.* (i) For exchanges in which the transferee's basis in the interest is determined in whole or in part by reference to the transferor's basis in the interest, paragraph (b)(5) of this section shall apply. For all other transfers which result in a basis adjustment under section 743(b), paragraphs (b)(2) through (b)(4) of this section shall apply. Except as provided in paragraph (b)(5) of this section, the portion of the basis adjustment allocated to one class of property may be an increase while the portion allocated to the other class is a decrease. This would be the case even though the total amount of the basis adjustment is zero. Except as provided in paragraph (b)(5) of this section, the portion of the basis adjustment allocated to one item of property within a class may be an increase while the portion allocated to another is a decrease. This would be the case even though the basis adjustment allocated to the class is zero.

(ii) *Hypothetical transaction.* For purposes of paragraphs (b)(2) through (b)(4) of this section, the allocation of

the basis adjustment under section 743(b) between the classes of property and among the items of property within each class are made based on the allocations of income, gain, or loss (including remedial allocations under § 1.704–3(d)) that the transferee partner would receive (to the extent attributable to the acquired partnership interest) if, immediately after the transfer of the partnership interest, all of the partnership's property were disposed of in a fully taxable transaction for cash in an amount equal to the fair market value of such property (the hypothetical transaction).

(2) *Allocations between classes of property*—(i) *In general.* The amount of the basis adjustment allocated to the class of ordinary income property is equal to the total amount of income, gain, or loss (including any remedial allocations under § 1.704–3(d)) that would be allocated to the transferee (to the extent attributable to the acquired partnership interest) from the sale of all ordinary income property in the hypothetical transaction. The amount of the basis adjustment to capital gain property is equal to—

(A) The total amount of the basis adjustment under section 743(b); less

(B) The amount of the basis adjustment allocated to ordinary income property under the preceding sentence; provided, however, that in no event may the amount of any decrease in basis allocated to capital gain property exceed the partnership's basis (or in the case of property subject to the remedial allocation method, the transferee's share of any remedial loss under § 1.704–3(d) from the hypothetical transaction) in capital gain property. In the event that a decrease in basis allocated to capital gain property would otherwise exceed the partnership's basis in capital gain property, the excess must be applied to reduce the basis of ordinary income property.

(ii) *Examples.* The provisions of this paragraph (b)(2) are illustrated by the following examples:

Example 1. (i) A and B form equal partnership PRS. A contributes $50,000 and Asset 1, a nondepreciable capital asset with a fair market value of $50,000 and an adjusted tax basis of $25,000. B contributes $100,000. PRS uses the cash to purchase Assets 2, 3, and 4. After a year, A sells its interest in PRS to T for $120,000. At the time of the transfer, A's share of the partnership's basis in partnership assets is $75,000. Therefore, T receives a $45,000 basis adjustment.

(ii) Immediately after the transfer of the partnership interest to T, the adjusted basis and fair market value of PRS's assets are as follows:

	Assets	
	Adjusted basis	Fair market value
Capital Gain Property:		
Asset 1	$25,000	$75,000
Asset 2	100,000	117,500
Ordinary Income Property:		
Asset 3	40,000	45,000
Asset 4	10,000	2,500
Total	175,000	240,000

(iii) If PRS sold all of its assets in a fully taxable transaction at fair market value immediately after the transfer of the partnership interest to T, the total amount of capital gain that would be allocated to T is equal to $46,250 ($25,000 section 704(c) built-in gain from Asset 1, plus fifty percent of the $42,500 appreciation in capital gain property). T would also be allocated a $1,250 ordinary loss from the sale of the ordinary income property.

(iv) The amount of the basis adjustment that is allocated to ordinary income property is equal to ($1,250) (the amount of the loss allocated to T from the hypothetical sale of the ordinary income property).

(v) The amount of the basis adjustment that is allocated to capital gain property is equal to $46,250 (the amount of the basis adjustment, $45,000, less ($1,250), the amount of loss allocated to T from the hypothetical sale of the ordinary income property).

Example 2. (i) A and B form equal partnership PRS. A and B each contribute $1,000 cash which the partnership uses to purchase Assets 1, 2, 3, and 4. After a year, A sells its partnership interest to T for $1,000. T's basis adjustment under section 743(b) is zero.

(ii) Immediately after the transfer of the partnership interest to T, the adjusted basis and fair market value of PRS's assets are as follows:

	Assets	
	Adjusted basis	Fair market value
Capital Gain Property:		
Asset 1	$500	$750
Asset 2	500	500
Ordinary Income Property:		
Asset 3	500	250
Asset 4	500	500
Total	2,000	2,000

(iii) If, immediately after the transfer of the partnership interest to T, PRS sold all of its assets in a fully taxable transaction at fair market value, T would be allocated a loss of $125 from the sale of the ordinary income property. Thus, the amount of the basis adjustment to ordinary income property is ($125). The amount of the basis adjustment to capital gain property is $125 (zero, the amount of the basis adjustment under section 743(b), less ($125), amount of the basis adjustment allocated to ordinary income property).

(3) *Allocation within the class*—(i) *Ordinary income property.* The amount of the basis adjustment to each item of property within the class of ordinary income property is equal to—

(A) The amount of income, gain, or loss (including any remedial allocations under § 1.704–3(d)) that would be allocated to the transferee (to the extent attributable to the acquired partnership interest) from the hypothetical sale of the item; reduced by

(B) The product of—

(*1*) Any decrease to the amount of the basis adjustment to ordinary income property required pursuant to the last sentence of paragraph (b)(2)(i) of this section; multiplied by

(*2*) A fraction, the numerator of which is the fair market value of the item of property to the partnership and the denominator of which is the total fair market value of all of the partnership's items of ordinary income property.

(ii) *Capital gain property*. The amount of the basis adjustment to each item of property within the class of capital gain property is equal to—

(A) The amount of income, gain, or loss (including any remedial allocations under § 1.704–3(d)) that would be allocated to the transferee (to the extent attributable to the acquired partnership interest) from the hypothetical sale of the item; minus

(B) The product of—

(*1*) The total amount of gain or loss (including any remedial allocations under § 1.704–3(d)) that would be allocated to the transferee (to the extent attributable to the acquired partnership interest) from the hypothetical sale of all items of capital gain property, minus the amount of the positive basis adjustment to all items of capital gain property or plus the amount of the negative basis adjustment to capital gain property; multiplied by

(*2*) A fraction, the numerator of which is the fair market value of the item of property to the partnership, and the denominator of which is the fair market value of all of the partnership's items of capital gain property.

(iii) *Examples*. The provisions of this paragraph (b)(3) are illustrated by the following examples:

Example 1. (i) Assume the same facts as Example 1 in paragraph (b)(2)(ii) of this section. Of the $45,000 basis adjustment, $46,250 was allocated to capital gain property. The amount allocated to ordinary income property was ($1,250).

(ii) Asset 1 is a capital gain asset, and T would be allocated $37,500 from the sale of Asset 1 in the hypothetical transaction. Therefore, the amount of the adjustment to Asset 1 is $37,500.

(iii) Asset 2 is a capital gain asset, and T would be allocated $8,750 from the sale of Asset 2 in the hypothetical transaction. Therefore, the amount of the adjustment to Asset 2 is $8,750.

(iv) Asset 3 is ordinary income property, and T would be allocated $2,500 from the sale of Asset 3 in the hypothetical transaction. Therefore, the amount of the adjustment to Asset 3 is $2,500.

(v) Asset 4 is ordinary income property, and T would be allocated ($3,750) from the sale of Asset 4 in the hypothetical transaction. Therefore, the amount of the adjustment to Asset 4 is ($3,750).

Example 2. (i) Assume the same facts as Example 1 in paragraph (b)(2)(ii) of this section, except that A sold its interest in PRS to T for $110,000 rather than $120,000. T, therefore, receives a basis adjustment under section 743(b) of $35,000. Of the $35,000 basis adjustment, ($1,250) is allocated to ordinary income property, and $36,250 is allocated to capital gain property.

(ii) Asset 3 is ordinary income property, and T would be allocated $2,500 from the sale of Asset 3 in the hypothetical transaction. Therefore, the amount of the adjustment to Asset 3 is $2,500.

(iii) Asset 4 is ordinary income property, and T would be allocated ($3,750) from the sale of Asset 4 in the hypothetical transaction. Therefore, the amount of the adjustment to Asset 4 is ($3,750).

(iv) Asset 1 is a capital gain asset, and T would be allocated $37,500 from the sale of Asset 1 in the hypothetical transaction. Asset 2 is a capital gain asset, and T would be allocated $8,750 from the sale of Asset 2 in the hypothetical transaction. The total amount of gain that would be allocated to T from the sale of the capital gain assets in the hypothetical transaction is $46,250, which exceeds the amount of the basis adjustment allocated to capital gain property by $10,000. The amount of the adjustment to Asset 1 is $33,604 ($37,500 minus $3,896 ($10,000 × $75,000/192,500)). The amount of the basis adjustment to Asset 2 is $2,646 ($8,750 minus $6,104 ($10,000 × $117,500/192,500)).

(4) *Income in respect of a decedent*—(i) *In general*. Where a partnership interest is transferred as a result of the death of a partner, under section 1014(c) the transferee's basis in its partnership interest is not adjusted for that portion of the interest, if any, which is attributable to items representing income in respect of a decedent under section 691. See § 1.742–1. Accordingly, if a partnership interest is transferred as a result of the death of a partner, and the partnership holds assets representing income in respect of a decedent, no part of the basis adjustment under section 743(b) is allocated to these assets. See § 1.743–1(b).

(ii) The provisions of this paragraph (b)(4) are illustrated by the following example:

Example. (i) A and B are equal partners in personal service partnership PRS. As a result of B's death, B's partnership interest is transferred to T when PRS's balance sheet (reflecting a cash receipts and disbursements method of accounting) is as follows:

	Assets	
	Adjusted basis	Fair market value
Capital Asset	$2,000	$5,000
Unrealized Receivables	0	15,000
Total	2,000	20,000

	Liabilities and Capital	
	Adjusted per books	Fair market value
Capital:		
A	1,000	10,000
B	1,000	10,000
Total	2,000	20,000

(ii) None of the assets owned by PRS is section 704(c) property, and the capital asset is nondepreciable. The fair market value of T's partnership interest on the applicable date of valuation set forth in section 1014 is $10,000. Of this amount, $2,500 is

attributable to T's share of the partnership's capital asset, and $7,500 is attributable to T's 50% share of the partnership's unrealized receivables. The partnership's unrealized receivables represent income in respect of a decedent. Accordingly, under section 1014(c), T's basis in its partnership interest is not adjusted for that portion of the interest which is attributable to the unrealized receivables. Therefore, T's basis in its partnership interest is $2,500.

(iii) At the time of the transfer, B's share of the partnership's basis in partnership assets is $1,000. Accordingly, T receives a $1,500 basis adjustment under section 743(b). Under this paragraph (b)(4), the entire basis adjustment is allocated to the partnership's capital asset.

(5) *Transferred basis exchanges*—(i) *In general.* This paragraph (b)(5) applies to basis adjustments under section 743(b) which result from exchanges in which the transferee's basis in the interest is determined in whole or in part by reference to the transferor's basis in the interest. For example, this paragraph applies if a partnership interest is contributed to a corporation in a transaction to which section 351 applies or to a partnership in a transaction to which section 721(a) applies.

(ii) *Allocations between classes of property.* If the total amount of the basis adjustment under section 743(b) is zero, then no adjustment to the basis of partnership property will be made under this paragraph (b)(5). If there is an increase in basis to be allocated to partnership assets, such increase must be allocated to capital gain property or ordinary income property, respectively, only if the total amount of gain or loss (including any remedial allocations under § 1.704–3(d)) that would be allocated to the transferee (to the extent attributable to the acquired partnership interest) from the hypothetical sale of all such property would result in a net gain or net income, as the case may be, to the transferee. Where, under the preceding sentence, an increase in basis may be allocated to both capital gain assets and ordinary income assets, the increase shall be allocated to each class in proportion to the net gain or net income, respectively, which would be allocated to the transferee from the sale of all assets in each class. If there is a decrease in basis to be allocated to partnership assets, such decrease must be allocated to capital gain property or ordinary income property, respectively, only if the total amount of gain or loss (including any remedial allocations under § 1.704–3(d)) that would be allocated to the transferee (to the extent attributable to the acquired partnership interest) from the hypothetical sale of all such property would result in a net loss to the transferee. Where, under the preceding sentence, a decrease in basis may be allocated to both capital gain assets and ordinary income assets, the decrease shall be allocated to each class in proportion to the net loss which would be allocated to the transferee from the sale of all assets in each class.

(iii) *Allocations within the classes*—(A) *Increases.* If there is an increase in basis to be allocated within a class, the increase must be allocated first to properties with unrealized appreciation in proportion to the transferee's share of the respective amounts of unrealized appreciation before such increase (but only to the extent of the transferee's share of each property's unrealized appreciation). Any remaining increase must be allocated among the properties within the class in proportion to the transferee's share of the amount that would be realized by the partnership upon the hypothetical sale of each asset in the class.

(B) *Decreases.* If there is a decrease in basis to be allocated within a class, the decrease must be allocated first to properties with unrealized depreciation in proportion to the transferee's shares of the respective amounts of unrealized depreciation before such decrease (but only to the extent of the transferee's share of each property's unrealized depreciation). Any remaining decrease must be allocated among the properties within the class in proportion to the transferee's shares of their adjusted bases (as adjusted under the preceding sentence).

(C) *Limitation in decrease of basis.* Where, as the result of a transaction to which this paragraph (b)(5) applies, a decrease in basis must be allocated to capital gain assets, ordinary income assets, or both, and the amount of the decrease otherwise allocable to a particular class exceeds the transferee's share of the adjusted basis to the partnership of all depreciated assets in that class, the transferee's negative basis adjustment is limited to the transferee's share of the partnership's adjusted basis in all depreciated assets in that class.

(D) *Carryover adjustment.* Where a transferee's negative basis adjustment under section 743(b) cannot be allocated to any asset, because the adjustment exceeds the transferee's share of the adjusted basis to the partnership of all depreciated assets in a particular class, the adjustment is made when the partnership subsequently acquires property of a like character to which an adjustment can be made.

(iv) *Examples.* The provisions of this paragraph (b)(5) are illustrated by the following examples:

Example 1. A is a member of partnership LTP, which has made an election under section 754. The three partners in LTP have equal interests in capital and profits. Solely in exchange for a partnership interest in UTP, A contributes its interest in LTP to UTP in a transaction described in section 721. At the time of the transfer, A's basis in its partnership interest ($5,000) equals its share of inside basis (also $5,000). Under section 723, UTP's basis in its interest in LTP is $5,000. LTP's only two assets on the date of contribution are inventory with a basis of $5,000 and a fair market value of $7,500, and a nondepreciable capital asset with a basis of $10,000 and a fair market value of $7,500. The amount of the basis adjustment under section 743(b) to partnership property is $0 ($5,000, UTP's basis in its interest in LTP, minus $5,000, UTP's share of LTP's basis in partnership assets). Because UTP acquired its interest in LTP in a transferred basis exchange, and the total amount of the basis adjustment under section 743(b) is zero, UTP receives no special basis adjustments under section 743(b) with respect to the partnership property of LTP.

Example 2. (i) A purchases a partnership interest in LTP at a time when an election under section 754 is not in effect. The three partners in LTP have equal interests in capital and profits. During a later year for which LTP has an election under section 754 in effect, and in a transaction that is unrelated to A's purchase of the LTP interest, A contributes its interest in LTP to UTP in a transaction described in section 721 (solely in exchange for a partnership interest in UTP). At the time of the transfer, A's adjusted basis in its interest in LTP is $20,433. Under section 721, A recognizes no gain or loss as a result of the contribution of its partnership interest to UTP. Under section 723, UTP's basis in its partnership interest in LTP is $20,433. The balance sheet of LTP on the date of the contribution shows the following:

	Assets	
	Adjusted basis	Fair market value
Cash	$5,000	$5,000
Accounts receivable	10,000	10,000
Inventory	20,000	21,000

	Assets	
	Adjusted basis	Fair market value
Nondepreciable capital asset	20,000	40,000
Total	55,000	76,000

	Liabilities and Capital	
	Adjusted per books	Fair market value
Liabilities	$10,000	$10,000
Capital:		
A	15,000	22,000
B	15,000	22,000
C	15,000	22,000
Total	55,000	76,000

(ii) The amount of the basis adjustment under section 743(b) is the difference between the basis of UTP's interest in LTP and UTP's share of the adjusted basis to LTP of partnership property. UTP's interest in the previously taxed capital of LTP is $15,000 ($22,000, the amount of cash UTP would receive if LTP liquidated immediately after the hypothetical transaction, decreased by $7,000, the amount of tax gain allocated to UTP from the hypothetical transaction). UTP's share of the adjusted basis to LTP of partnership property is $18,333 ($15,000 share of previously taxed capital, plus $3,333 share of LTP's liabilities). The amount of the basis adjustment under section 743(b) to partnership property therefore, is $2,100 ($20,433 minus $18,333).

(iii) The total amount of gain that would be allocated to UTP from the hypothetical sale of capital gain property is $6,666.67 (one-third of the excess of the fair market value of LTP's nondepreciable capital asset, $40,000, over its basis, $20,000). The total amount of gain that would be allocated to UTP from the hypothetical sale of ordinary income property is $333.33 (one-third of the excess of the fair market value of LTP's inventory, $21,000, over its basis, $20,000). Under paragraph (b)(5), LTP must allocate $2,000 ($6,666.67 divided by $7,000 times $2,100) of UTP's basis adjustment to the nondepreciable capital asset. LTP must allocate $100 ($333.33 divided by $7,000 times $2,100) of UTP's basis adjustment to the inventory.

(c) *Adjustments under section 734(b)*—(1) *Allocations between classes of property*—(i) *General rule.* Where there is a distribution of partnership property resulting in an adjustment to the basis of undistributed partnership property under section 734(b)(1)(B) or (b)(2)(B), the adjustment must be allocated to remaining partnership property of a character similar to that of the distributed property with respect to which the adjustment arose. Thus, when the partnership's adjusted basis of distributed capital gain property immediately prior to distribution exceeds the basis of the property to the distributee partner (as determined under section 732), the basis of the undistributed capital gain property remaining in the partnership is increased by an amount equal to the excess. Conversely, when the basis to the distributee partner (as determined under section 732) of distributed capital gain property exceeds the partnership's adjusted basis of such property immediately prior to the distribution, the basis of the undistributed capital gain property remaining in the partnership is decreased by an amount equal to such excess. Similarly, where there is a distribution of ordinary income property, and the basis of the property to the distributee partner (as determined under section 732) is not the same as the partnership's adjusted basis of the property immediately prior to distribution, the adjustment is made only to undistributed property of the same class remaining in the partnership.

(ii) *Special rule.* Where there is a distribution resulting in an adjustment under section 734(b)(1)(A) or (b)(2)(A) to the basis of undistributed partnership property, the adjustment is allocated only to capital gain property.

(2) *Allocations within the classes*—(i) *Increases.* If there is an increase in basis to be allocated within a class, the increase must be allocated first to properties with unrealized appreciation in proportion to their respective amounts of unrealized appreciation before such increase (but only to the extent of each property's unrealized appreciation). Any remaining increase must be allocated among the properties within the class in proportion to their fair market values.

(ii) *Decreases.* If there is a decrease in basis to be allocated within a class, the decrease must be allocated first to properties with unrealized depreciation in proportion to their respective amounts of unrealized depreciation before such decrease (but only to the extent of each property's unrealized depreciation). Any remaining decrease must be allocated among the properties within the class in proportion to their adjusted bases (as adjusted under the preceding sentence).

(3) *Limitation in decrease of basis.* Where a decrease in the basis of partnership assets is required under section 734(b)(2) and the amount of the decrease exceeds the adjusted basis to the partnership of property of the required character, the basis of such property is reduced to zero (but not below zero).

(4) *Carryover adjustment.* Where, in the case of a distribution, an increase or a decrease in the basis of undistributed property cannot be made because the partnership owns no property of the character required to be adjusted, or because the basis of all the property of a like character has been reduced to zero, the adjustment is made when the partnership subsequently acquires property of a like character to which an adjustment can be made.

(5) *Example.* The following example illustrates this paragraph (c):

Example. (i) A, B, and C form equal partnership PRS. A contributes $50,000 and Asset 1, capital gain property with a fair market value of $50,000 and an adjusted tax basis of $25,000. B and C each contributes $100,000. PRS uses the cash to purchase Assets 2, 3, 4, 5, and 6. Assets 4, 5, and 6 are the only assets held by the partnership which are subject to section 751. The partnership has an election in effect under section 754. After seven years, the adjusted basis and fair market value of PRS's assets are as follows:

	Assets	
	Adjusted basis	Fair market value
Capital Gain Property:		
Asset 1	$ 25,000	$ 75,000
Asset 2	100,000	117,500
Asset 3	50,000	60,000
Ordinary Income Property:		
Asset 4	$ 40,000	$ 45,000
Asset 5	50,000	60,000
Asset 6	10,000	2,500
Total	275,000	360,000

(ii) *Allocation between classes.* Assume that PRS distributes Assets 3 and 5 to A in complete liquidation of A's interest in the partnership. A's basis in the partnership interest was $75,000. The partnership's basis in Assets 3 and 5 was $50,000 each. A's $75,000 basis in its partnership interest is allocated between Assets 3 and 5 under sections 732(b) and (c). A will, therefore, have a basis of $25,000 in Asset 3 (capital gain property), and a basis of $50,000 in Asset 5 (section 751 property). The distribution results in a $25,000 increase in the basis of capital gain property. There is no change in the basis of ordinary income property.

(iii) *Allocation within class.* The amount of the basis increase to capital gain property is $25,000 and must be allocated among the remaining capital gain assets in proportion to the difference between the fair market value and basis of each. The fair market value of Asset 1 exceeds its basis by $50,000. The fair market value of Asset 2 exceeds its basis by $17,500. Therefore, the basis of Asset 1 will be increased by $18,519 ($25,000, multiplied by $50,000, divided by $67,500), and the basis of Asset 2 will be increased by $6,481 ($25,000 multiplied by $17,500, divided by $67,500).

(d) *Effective date.* This section applies to transfers of partnership interests and distributions of property from a partnership that occur on or after December 15, 1999.

Par. 9. Section 1.1017–1 is amended by:

1. Revising paragraph (g)(2)(iv).
2. Adding paragraph (g)(2)(v).

The addition and revision read as follows:

§ 1.1017–1 Basis reductions following a discharge of indebtedness.

* * * * *

(g) * * *

(2) * * *

(iv) *Partner's share of partnership basis*—(A) *In general.* For purposes of this paragraph (g), a partner's proportionate share of the partnership's basis in depreciable property (or depreciable real property) is equal to the sum of—

(*1*) The partner's section 743(b) basis adjustments to items of partnership depreciable property (or depreciable real property); and

(*2*) The common basis depreciation deductions (but not including remedial allocations of depreciation deductions under § 1.704–3(d)) that, under the terms of the partnership agreement effective for the taxable year in which the discharge of indebtedness occurs, are reasonably expected to be allocated to the partner over the property's remaining useful life. The assumptions made by a partnership in determining the reasonably expected allocation of depreciation deductions must be consistent for each partner. For example, a partnership may not treat the same depreciation deductions as being reasonably expected by more than one partner.

(B) *Effective date.* This paragraph (g)(2)(iv) applies to elections made under sections 108(b)(5) and 108(c) on or after December 15, 1999.

(v) *Treatment of basis reduction*—(A) *Basis adjustment.* The amount of the reduction to the basis of depreciable partnership property constitutes an adjustment to the basis of partnership property with respect to the partner only. No adjustment is made to the common basis of partnership property. Thus, for purposes of income, deduction, gain, loss, and distribution, the partner will have a special basis for those partnership properties the bases of which are adjusted under section 1017 and this section.

(B) *Recovery of adjustments to basis of partnership property.* Adjustments to the basis of partnership property under this section are recovered in the manner described in § 1.743–1.

(C) *Effect of basis reduction.* Adjustments to the basis of partnership property under this section are treated in the same manner and have the same effect as an adjustment to the basis of partnership property under section 743(b). The following example illustrates this paragraph (g)(2)(v):

Example. (i) A, B, and C are equal partners in partnership PRS, which owns (among other things) Asset 1, an item of depreciable property with a basis of $30,000. A's basis in its partnership interest is $20,000. Under the terms of the partnership agreement, A's share of the depreciation deductions from Asset 1 over its remaining useful life will be $10,000. Under section 1017, A requests, and PRS agrees, to decrease the basis of Asset 1 with respect to A by $10,000.

(ii) In the year following the reduction of basis under section 1017, PRS amends its partnership agreement to provide that items of depreciation and loss from Asset 1 will be allocated equally between B and C. In that year, A's distributive share of the partnership's common basis depreciation deductions from Asset 1 is now $0. Under § 1.743–1(j)(4)(ii)(B), the amount of the section 1017 basis adjustment that A recovers during the year is $1,000. A will report $1,000 of ordinary income because A's distributive share of the partnership's common basis depreciation deductions from Asset 1 ($0) is insufficient to offset the amount of the section 1017 basis adjustment recovered by A during the year ($1,000).

(iii) In the following year, PRS sells Asset 1 for $15,000 and recognizes a $12,000 loss. This loss is allocated equally between B and C, and A's share of the loss is $0. Upon the sale of Asset 1, A recovers its entire remaining section 1017 basis adjustment ($9,000). A will report $9,000 of ordinary income.

(D) *Effective date.* This paragraph (g)(2)(v) applies to elections made under sections 108(b)(5) and 108(c) on or after December 15, 1999.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 10. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 11. In § 602.101, paragraph (b) is amended by revising the entries for 1.732–1 and 1.743–1 in the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.732–1	1545–0099 1545–1588
* * * * *	
1.743–1	1545–0074 1545–1588
* * * * *	

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

Approved November 29, 1999.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 99–32400 Filed 12–14–99; 8:45 am]

BILLING CODE 4830–01–U

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in January 2000. Interest assumptions are also published on the PBGC's web site (http://www.pbgc.gov).

EFFECTIVE DATE: January 1, 2000.

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

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

Among the actuarial assumptions prescribed in part 4044 are interest assumptions. These interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Two sets of interest assumptions are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. This amendment adds to appendix B to part 4044 the annuity and lump sum interest assumptions for valuing benefits in plans with valuation dates during January 2000.

For annuity benefits, the interest assumptions will be 6.90 percent for the first 25 years following the valuation date and 6.25 percent thereafter. The annuity interest assumptions (in comparison with those in effect during December 1999) reflect a 5-year increase in the period during which the initial rate applies (from a period of 20 years following the valuation date to a period of 25 years following the valuation date). The initial rate, in effect for the first 25 years following the valuation date, represents an increase (from the initial rate in effect for December 1999) of 0.40 percent. The ultimate rate, in effect thereafter, represents an increase (from the ultimate rate in effect for December 1999) of 1.00 percent.

For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 5.00 percent for the period during which a benefit is in pay status, 4.25 percent during the seven-year period directly preceding the benefit's placement in pay status, and 4.00 percent during any other years preceding the benefit's placement in pay status. The lump sum interest assumptions represent a decrease (from those in effect for December 1999), of 0.25 percent for the period during which a benefit is in pay status and for the seven-year period directly preceding the benefit's placement in pay status; they are otherwise unchanged.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans with valuation dates during January 2000, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

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

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

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

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

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

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

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

2. In appendix B, a new entry is added to Table I, and Rate Set 75 is added to Table II, as set forth below. The introductory text of each table is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 4044—Interest Rates Used to Value Annuities and Lump Sums

TABLE I.—Annuity Valuations:

[This table sets forth, for each indicated calendar month, the interest rates (denoted by i_1, i_2, . . ., and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.]

For valuation dates occurring in the month—	The values of i_t are:								
	i_t	for	t =	i_t	for	t =	i_t	for	t =
* *	*		*		*		*		*
January 2000	.0690	1–25	.0625	>25	N/A	N/A			

Table II.—Lump Sum Valuations:

[In using this table: (1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply; (2) For benefits for which the deferral period is y years (where y is an integer and $0 < y \leq n_1$), interest rate i_1, shall apply from the valuation date for a period of y years, and thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is y years (where y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_2 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is y years (where y is an integer and $y > n_1 + n_2$), interest rate i^3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply.]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* *	*	*		*		*		*
75	1–1–00	2–1–00	5.00	4.25	4.00	4.00	7	8

Issued in Washington, DC, on this 13th day of December 1999.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 99–32608 Filed 12–14–99; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Boiler and Pressure Vessel Codes

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Technical amendment.

SUMMARY: This document makes technical amendments to regulations that were published in the **Federal Register** (61 FR 60019, November 26, 1996; redesignated and amended at 63 FR 26367, May 12, 1998; 63 FR 29479, 29484, May 29, 1998; 63 FR 37068, July 9, 1998) and were codified in the July 1, 1998, edition of Title 30—Minerals Resources, Parts 299–699, Code of Federal Regulations. This amendment incorporates updated versions of the ANSI/ASME Boiler and Pressure Vessel Code, Sections I, IV, and VIII.

EFFECTIVE DATE: December 15, 1999.

The incorporation by reference of the publications listed in the rule was approved by the Director of the Federal Register as of December 15, 1999.

FOR FURTHER INFORMATION CONTACT: Joseph Levine (703) 787–1033.

SUPPLEMENTARY INFORMATION: This amendment affects operators who install new boilers and pressure vessels on OCS facilities. Currently, sections I, IV, and VIII of the 1995 edition of the ANSI/ASME Boiler and Pressure Vessel Code are incorporated by reference into MMS regulations in the table in paragraph (e) of 30 CFR 250.101. MMS has determined that the 1998 edition with the 1999 amendment provides a degree of safety equal to the currently incorporated 1995 edition, as has been determined by industry. According to 30 CFR 250.101(a)(2), we are incorporating by reference these updated versions.

The documents currently incorporated by reference and updated by this technical amendment are: ANSI/ASME Boiler and Pressure Vessel Code, Section I, Power Boilers, including Appendices, 1995 Edition; ANSI/ASME Boiler and Pressure Vessel Code, Section IV, Heating Boilers including Nonmandatory Appendices A, B, C, D, E, F, H, I, and J, and the Guide to Manufacturers Data Report Forms, 1995 Edition; ANSI/ASME Boiler and Pressure Vessel Code, Section VIII, Pressure Vessels, Divisions 1 and 2, including Nonmandatory Appendices, 1995 Edition.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, 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.

Accordingly, 30 CFR Part 250 is amended by making the following technical amendments:

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: 43 U.S.C. 1331 *et seq.*

§ 250.101 [Amended]

2. In § 250.101, in the table in paragraph (e), the three entries for ''ANSI/ASME Boiler and Pressure Vessel Code'' are revised to read as follows:

§ 250.101 Documents incorporated by reference.

* * * * *

(e) * * *

Title of documents	Incorporated by reference at—
* * * * * *	*
ANSI/ASME Boiler and Pressure Vessel Code, Section I, Rules for Construction of Power Boilers, including Appendices, 1998 Edition; July 1, 1999 Addenda, Rules for Construction of Power Boilers, by ASME Boiler and Pressure Vessel Committee Subcommittee on Power Boilers; and all Section I Interpretations Volume 43.	§ 250.803(b)(1), (b)(1)(i); § 250.1629(b)(1), (b)(1)(i).
ANSI/ASME Boiler and Pressure Vessel Code, Section IV, Rules for Construction of Heating Boilers, including Nonmandatory Appendices A, B, C, D, E, F, H, I, K, and L, and the Guide to Manufacturers Data Report Forms, 1998 Edition; July 1, 1999 Addenda, Rules for Construction of Heating Boilers, by ASME Boiler and Pressure Vessel Committee Subcommittee on Heating Boilers; and all Section IV Interpretations Volumes 43 and 44.	§ 250.803(b)(1), (b)(1)(i); § 250.1629(b)(1), (b)(1)(i).

Title of documents	Incorporated by reference at—
ANSI/ASME Boiler and Pressure Vessel Code, Section VIII, Rules for Construction of Pressure Vessels, Divisions 1 and 2, including Nonmandatory Appendices, 1998 Edition; July 1, 1999 Addenda, Rules for Construction of Pressure Vessels, by ASME Boiler and Pressure Vessel Committee Subcommittee on Pressure Vessels; and all Section VIII Interpretations, Divisions 1 and 2, Volumes 43 and 44.	§ 250.803(b)(1), (b)(1)(i); § 250.1629(b)(1), (b)(1)(i).
* * * * * *	*

Dated: December 3, 1999.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 99–31873 Filed 12–14–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1302

RIN 0970–AB98

Head Start Program

AGENCY: Administration on Children, Youth and Families (ACYF) Administration for Children and Families (ACF), HHS.

ACTION: Final rule.

SUMMARY: The Administration on Children, Youth and Families is amending the Head Start regulations governing policies and procedures on selection and funding of grantees. The amendment removes the section on priority for previously selected Head Start agencies in open competitions for Head Start grants. We are removing this section because of increased confusion among existing Head Start grantees about the meaning of ''priority'' as ACYF acts to replace grantees who have been terminated or relinquish their grant. This change clarifies that the ''priority'' provided under the Head Start Act (''Act'') applies to annual refunding of existing grantees and not to competition to select a grantee to serve an unserved area or an area previously served by a grantee no longer with the program. Removal of this section does not affect the ongoing funding or operation of Head Start grantees.

DATES: This rule is effective January 14, 2000.

FOR FURTHER INFORMATION CONTACT: James Kolb (202) 205–8580.

SUPPLEMENTARY INFORMATION:

I. Program Purpose

Head Start is authorized under the Head Start Act (42 U.S.C. 9801 *et seq.*). It is a national program providing comprehensive developmental services primarily to low-income preschool children, primarily age three to the age of compulsory school attendance, and their families. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. Also, section 645A of the Head Start Act provides authority (authorized in 1994) to fund programs for families with infants and toddlers. Programs receiving funds under the authority of this section are referred to as Early Head Start programs.

Additionally, Head Start programs are required to provide for the direct participation of the parents of enrolled children in the development, conduct, and direction of local programs. Parents also receive training and education to foster their understanding of and involvement in the development of their children. In fiscal year 1998, Head Start served 823,000 children through a network of over 2,000 grantees and delegate agencies.

While Head Start is intended to serve primarily children whose families have incomes at or below the poverty line or who receive public assistance, Head Start policy permits up to 10 percent of the children in local programs to be from families who do not meet these low-income criteria. The Act also requires that a minimum of 10 percent of the enrollment opportunities in each program be made available to children with disabilities. Such children are expected to participate in the full range of Head Start services and activities with their non-disabled peers and to receive needed special education and related services.

II. Discussion of the Final Rule

The Administration for Children and Families (ACF) published on March 24, 1999, a Notice of Proposed Rulemaking (NPRM) proposing to remove § 1302.12, entitled ''Priority for previously selected Head Start agencies'' from the regulations governing the selection of Head Start grantees. This change was necessary to make it clear that the application of the priority provided by section 641(c) of the Head Start Act does not apply to competitions to select a grantee to serve an unserved area or an area previously served by a grantee no longer with the program. (The 1998 Head Start reauthorization, however, provides priority to a delegate agency that functioned in the community when the Secretary is designating a Head Start agency but this change would not affect this rule.) We made no changes to the final rule.

Eliminating § 1302.12 clarifies that priority applies to the annual refunding of existing grantees providing services within their communities, not to other circumstances such as selection of a replacement grantee. The threshold requirement under Section 641(d) of the Head Start Act for holding a competition for award of Head Start funding is that there be no entity in the ''community'' which is eligible for a priority. ''Community'' is defined in Section 641(b) as ''a city, county, multicity or multicounty unit within a State, an Indian reservation (including Indians in any off-reservation area designated by an appropriate tribal government in consultation with the Secretary), or a neighborhood or other area (irrespective of boundaries or political subdivisions) which provides a suitable organizational base and possesses the commonality of interest needed to operate a Head Start program.'' Under 45 CFR 1305.3(a), each grantee must specify in its annual application for refunding the ''service area'' to be served. The grantee must define its service area by ''county or sub-county area, such as a municipality, town or census tract or a federally-recognized Indian reservation,'' and it must not overlap with the service areas where other grantees have been designated to provide services, except where the service area of a Tribe includes a non-reservation area in which it serves children native to the reservation. A Head Start agency's approved service area defines the community it is serving. A community which has not previously been served, or was served by a grantee no longer participating in the program, by definition is one in which no grantee is currently providing Head Start services within the community, and therefore one for which the grantee must be

selected through a competition under Section 641(d) rather than through application of the priority provided under Section 641(c). (In the Notice of Proposed Rulemaking we referred to Section 641(a) as prohibiting selection of a Head Start grantee to provide services outside its current ''service area.'' Upon further reflection, we have determined that this interpretation of the requirements of Section 641(a) is neither the best interpretation nor is it necessary to support the decision to withdraw 45 CFR 1302.12 from the Head Start regulations. In addition, we have determined that there are circumstances where a current Head Start grantee would be considered eligible under Section 641(a) to receive a replacement grant through a competitive process. This would be the case where the Head Start grantee can demonstrate that it meets all of the requirements for designation under Section 641(a), including that the area it is applying to serve would be part of a single ''community'' as that term is defined under Section 641(b) with the area it is now serving if the grantee receives the replacement grant.)

One comment from a private, non-profit agency was received. The commenter suggested that instead of removing it, the priority should be expanded to include any agency already operating a Head Start or Early Head Start program. At a minimum, the commenter suggests leaving the regulation as it is.

We do not accept this recommendation. The comment ignores the statutory provision in Section 641(d) of the Head Start Act which requires that where no organization in the community is eligible for a priority that a competition must be held. In addition, it ignores the requirement in 45 CFR 1305.3(a) that each grantee must specify in its annual application for refunding the ''service area'' to be served. Thus, the mere fact that an agency is operating a Head Start program in the vicinity is not sufficient to establish priority for that agency. Finally, while the Head Start Act provides for long-term stability for grantees who are performing well by not requiring repeated re-competition, opening up an unserved area to healthy competition among agencies in the community to be served will help assure that a high-quality Head Start program will be operating in the community.

[Note: The references to Section 641 of the Head Start Act in this Preamble reflect, where appropriate, the recent reauthorization changes made to the Head Start Act in the Coats Human Services Reauthorization Act of 1998, Public Law 105–285, enacted October 27, 1998. The Head Start statutory changes in the Reauthorization Act do not affect the removal of 45 CFR 1302.12.]

We want to emphasize again that this rule does not affect in any way the annual refunding of existing grantees to continue to provide Head Start services in their approved service area. Grantees will continue to receive this priority for funding without interruption. Only when a grantee is terminated or relinquishes its grant, or in the case of an unserved area, and the area thus has no provider, does this rule have an effect.

III. Impact Analyses

Executive Order 12866

Executive Order 12866 require that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that the removal of 45 CFR 1302.12 is consistent with these priorities and principles. This regulation has been reviewed by OMB under E.O. 12866.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a ''significant economic impact on a substantial number of small entities'' an analysis must be prepared describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations and small governmental entities. Removal of section 1302.12 does not affect any Head Start grantees, including those that are small entities. The change brings the regulations into conformity with requirements of the regulations and the statute.

Paperwork Reduction Act

Under the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or record-keeping requirement inherent in a proposed or final rule. This final rule does not contain any reporting or recordkeeping requirements and therefore is not subject to the PRA.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 205 requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the proposed rule.

We have determined that this final rule will not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

Congressional Review of Rulemaking

This rule is not a ''major'' rule as defined in Chapter 8 of 5 U.S.C.

The Family Impact Requirement

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires a family impact assessment affecting family well-being.

We have determined that this action will not affect the family. Therefore, no analysis or certification of the impact of this action was developed.

List of Subjects in 45 CFR Part 1302

Education of disadvantaged, Grant programs-social programs.

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: September 29, 1999.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Approved: October 27, 1999.

Donna E. Shalala,

Secretary.

For the reasons set forth in the Preamble, 45 CFR part 1302 is amended to read as follows:

PART 1302—POLICIES AND PROCEDURES FOR SELECTION, INITIAL FUNDING, AND REFUNDING OF HEAD START GRANTEES, AND FOR SELECTION OF REPLACEMENT GRANTEES

1. The authority citation for Part 1302 is revised to read as follows:

Authority: 42 U.S.C. 9801 *et seq.*

§ 1302.12 [Removed]

2. Section 1302.12 is removed.

[FR Doc. 99–32420 Filed 12–14–99; 8:45 am]

BILLING CODE 4184–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CS Docket No. 96–83; FCC 99–360]

Preemption of Local Zoning Regulation of Satellite Earth Stations and Restrictions on Over-the-Air Reception Devices: Television Broadcast Service, Direct Broadcast Satellite and Multichannel Multipoint Distribution Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition on reconsideration.

SUMMARY: This document denies three petitions seeking reconsideration of the *Second Report and Order* in which the Over-the-Air Reception Devices rule was expanded to apply to antenna restrictions on rental property where the viewer has exclusive use or control. The Commission also concluded in the *Second Report and Order* that antenna restrictions on common or restricted access areas were beyond the scope of statutory authority for the rule. This document concludes that the findings in the *Second Report and Order* are reaffirmed, as no new facts or arguments are raised in these petitions for reconsideration.

EFFECTIVE DATE: December 15, 1999.

FOR FURTHER INFORMATION CONTACT: Eloise Gore at (202) 418-7200 or via internet at *egore@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Order on Reconsideration,* CS Docket No. 96–83, FCC 99–360, adopted November 19, 1999 and released November 24, 1999. The complete text of this *Order on Reconsideration* is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) at its headquarters, 445 12th Street, SW., Washington, DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036, or may be reviewed via internet at http://www.fcc.gov/csb/

Synopsis of Order on Reconsideration of the Second Report and Order

1. Three petitions were filed by: (1) Community Associations Institute (''CAI Petition''); (2) Personal Communications Industry Association (PCIA), Teligent, Inc., Association for Local Telecommunications Services, WinStar Communications, Inc., and Nextlink Communications, Inc. (collectively, ''PCIA Petition); and (3) Association for Maximum Service Television and the National Association of Broadcasters (''NAB) (collectively, ''NAB Petition''), requesting reconsideration of certain decisions in the *Second Report and Order,* which amended 47 CFR 1.4000, to prohibit restrictions on over-the-air reception devices on rental property.

2. CAI asks the Commission to reconsider the decision to permit tenants, who live in community associations, to install individual antennas without the permission of the home or unit owner from whom they rent. It argues that the only way for homeowners to prevent damage to their own property is through prior approval of tenants' antenna installations. While prematurely filed, the Commission addresses the merits of CAI's petition and concludes that there is not sufficient justification presented for allowing homeowners who rent out their property to require prior approval of antenna installations. Moreover, the threat of property damage in connection with antenna installation, as well as prior approval by a property owner, were issues which were already amply discussed and decided in the *Second Report and Order* and *Order on Reconsideration* of the *First Report and Order* (63 FR 67422), respectively.

3. The PCIA Petition seeks reconsideration of the Commission's conclusion in the *Second Report and Order* that prohibiting antenna restrictions in common or restricted access areas is beyond the authority granted to the Commission by Section 207 of the Telecommunications Act. Section 207 authorizes neither the imposition of affirmative duties on property owners nor the compensation mechanism necessary to avoid a potentially unconstitutional taking of private property. While PCIA Petitioners disagree with the Commission analysis in the *Second Report and Order,* they do not offer evidence or arguments that were not already thoroughly considered and discussed in the *Second Report and Order.*

4. Similarly, the NAB Petition disagrees with the Commission's analysis and interpretation of Section 207, but it too fails to offer new arguments or evidence to justify reconsideration of the Commission's conclusions in the *Second Report and Order.*

5. The parties have presented no new arguments or facts in the pleadings filed and the Commission is not required to reconsider arguments that have already been considered. Consequently, the Commission denies the petitions for reconsideration and affirms the *Second Report and Order.*

6. Accordingly, *it is ordered* that pursuant to Section 1, 4(i), 5(c) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 155(c) and 405, the petitions for reconsideration filed by the Community Associations Institute; by the Personal Communications Industry Association, Teligent, Inc., the Association for Local Telecommunications Services, WinStar Communications, Inc., and Nextlink Communications, Inc.; and by the Association for Maximum Service Television and the National Association of Broadcasters *are denied.*

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–32409 Filed 12–14–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2 and 95

[WT Docket No. 99–66, RM–9157, FCC 99–363]

Establishment of a Medical Implant Communications Service in the 402–405 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document establishes a Medical Implant Communications Service (MICS) operating in the 402–405 MHz band. MICS operations will consist of high-speed, ultra-low power, non-voice transmissions to and from implanted medical devices such as cardiac pacemakers and defibrillators. The rules will allow use of newly-developed, life-saving medical technology without harming other users of the frequency band.

DATES: Effective January 14, 2000.

FOR FURTHER INFORMATION CONTACT: Gene Thomson, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–0634. TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This document was prepared in response to the Commission's *Notice of Proposed Rulemaking,* 64 FR 10266 (March 3, 1999) and is a summary of the Commission's *Report and Order,* WT Docket No. 99–66, FCC 99–363, adopted November 19, 1999, and released November 29, 1999. The full text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th St. S.W., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, ITS, Inc., 1231 20th St. N.W., Washington, D.C. 20036, telephone (202) 857–3800. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418–0620 (voice), or (202) 418–2555 (TTY), or at mcontee@fcc.gov. The complete (but unofficial) text is also available on the Commission's Internet site at <http://www.fcc.gov/Bureaus/Wireless/Notices/1999/index.html> under the file name ''fcc99363.txt'' in ASCII text and ''fcc99363.wp'' in Word Perfect format.

Summary of Report and Order

The Commission has released a *Report and Order* that (a) amends the Table of Frequency Allocations in § 2.106 of the Commission's Rules; (b) allocates the 402–405 MHz band on a shared basis and designates this shared allocation for use by the MICS; and (c) revises part 95 of the Commission's Rules to permit the operation of ultra-low power MICS transmitters in the 402–405 MHz band without an individual license issued by the Commission.

The 402–405 MHz band was selected because it is suitable for propagation of radio signals within the human body, and is available internationally for medical implant use. Sharing the band with the Meteorological Aids Service is feasible because of the low power and duty cycle of MICS transmitters. In order to insure compliance with the technical standards, the rules require certification of MICS transmitters, but the Commission did not adopt its proposal to require registration of transmitting equipment with the manufacturer.

Administrative Matters

Final Regulatory Flexibility Analysis (FRFA)

1. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice* prepared in this proceeding. The Commission sought written public comment on the proposals in the *Notice,* including comments on the IRFA. This present FRFA conforms to the RFA.

A. Need for, and Objectives of, the Report and Order

2. In this proceeding, we amend parts 1, 2 and 95 of the Commission's Rules to establish the Medical Implant Communications Service (MICS) as a shared allocation in the Non-Government 402–405 MHz band, and to codify the service rules for the MICS. The adopted rules will permit the use of newly-developed, life-saving medical technology without causing interference to other users of the frequency band.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

3. No comments were submitted specifically in response to the IRFA.

C. Description and Estimate of the Number of Small Entities to Which the Adopted Rules Will Apply

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 governmental jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96 percent) are small entities. Of the estimated 81,600 small governmental entities, many are hospital and health care facilities.

5. In addition, the adopted rules would apply to manufacturers of medical implant devices and users of the proposed MICS equipment, such as hospitals and clinics that are not government health care facilities. According to the SBA's regulations, nursing homes and hospitals must have annual gross receipts of $5 million or less in order to qualify as a small business concern. There are approximately 11,471 nursing care firms in the nation, of which 7,953 have annual gross receipts of $5 million or less. There are approximately 3,856 hospital firms in the nation, of which 294 have gross receipts of $5 million or less. We do not know how many hospitals would actually implement MICS equipment; however, the maximum number of facilities to which the adopted rules would apply is 8,247.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

6. There is a reporting or recordkeeping requirement that will be imposed as a result of the actions adopted in this rule making proceeding. Manufacturers of medical implant programmer/control transmitters will continue to be required to follow our normal equipment authorization procedures, and include with each transmitting device a statement regarding harmful interference pursuant to §§ 95.1215(a) and 95.1217 of the Rules.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

7. By making frequency spectrum available, the adopted rules will have a beneficial economic impact on small business entities that would either manufacture, or contribute to the manufacturing of, equipment used in the MICS by enabling these businesses to increase their product lines. In addition, a beneficial, indirect, economic impact affects individuals who are the recipients of implanted MICS devices. While a precise determination of the cost savings is difficult to calculate, two examples are useful. First, over $15 million per year would be saved by eliminating the need to conduct quarterly interrogation of implanted cardiac defibrillators in the clinical setting. This estimate does not include the interrogation of pacemakers, which are implanted at a much higher

rate than defibrillators. Second, over $37 billion is currently spent annually on hospitalization due to heart failure. When devices currently under development for the management of heart failure incorporate the MICS technology, it is expected that there will be a meaningful reduction in hospitalization costs. Assuming this impact is as small as five percent, the estimated savings would be nearly $2 billion per year.

Report to Congress: The Commission will send a copy of the *Report and Order,* including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commisson will send a copy of the *Report and Order,* including FRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

Ordering Clauses

1. Accordingly, pursuant to the authority of Sections 4(i), 303(r), and 332(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 332(a)(2), parts 1, 2, and 95 of the Commission's Rules, that 47 CFR parts 1, 2 and 95 ARE AMENDED as set forth in the attached *Rule Changes.*

2. The rule changes adopted herein will become effective January 14, 2000.

3. The Commission's Reference Information Center, Consumer Information Bureau, SHALL SEND a copy of this *Report and Order,* WT Docket No. 99–66, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

4. Pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), that the late-filed comments (e-mail filed on April 9, 1999) by Dr. William Scanlon, ARE ACCEPTED for consideration in this proceeding.

5. Pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), that this proceeding *is terminated.*

List of Subjects in 47 CFR Parts 1, 2, and 95

Communications equipment, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 2, and 95 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 303(r).

2. Section 1.1307 is amended by revising paragraph (b)(2) to read as follows:

§ 1.1307 Actions which may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

* * * * *

(b) * * *

(2) Mobile and portable transmitting devices that operate in the Cellular Radiotelephone Service, the Personal Communications Services (PCS), the Satellite Communications Services, the General Wireless Communications Service, the Wireless Communications Service, the Maritime Services (ship earth stations only) and the Specialized Mobile Radio Service authorized under Subpart H of parts 22, 24, 25, 26, 27, 80, and 90 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§ 2.1091 and 2.1093 of this chapter. Unlicensed PCS, unlicensed NII and millimeter wave devices are also subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§ 15.253(f), 15.255(g), 15.319(i), and 15.407(f) of this chapter. Equipment authorized for use in the Medical Implant Communications Service (MICS) as a medical implant transmitter (as defined in Appendix 1 to Subpart E of Part 95 of this chapter) is subject to routine environmental evaluation for RF exposure prior to equipment authorization, as specified in § 2.1093 of this chapter by finite difference time domain computational modeling or laboratory measurement techniques. Where a showing is based on computational modeling, the Commission retains the discretion to request that specific absorption rate measurement data be submitted. All other mobile, portable, and unlicensed transmitting devices are categorically excluded from routine environmental evaluation for RF exposure under §§ 2.1091, 2.1093 of this chapter except as specified in paragraphs (c) and (d) of this section.

* * * * *

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

3. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 307, 336 and 337, unless otherwise noted.

4. In § 2.106, the Table of Frequency Allocations is amended by revising the entries for 402–403 MHz and 403–406 MHz, and adding footnote US345 in numerical order to read as follows:

§ 2.106 Table of Frequency Allocations.

International table			United States table		FCC use designators	
Region 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Government	Non-government	Rule part(s)	Special-use frequencies
			Allocation MHz	Allocation MHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
*	*	*	*	*	*	*
402–403 METEOROLOGICAL AIDS EARTH EXPLORATION-SATELLITE (Earth-to-space) METEOROLOGICAL SATELLITE (Earth-to-space) Fixed Mobile except aeronautical mobile	402–403 METEOROLOGICAL AIDS EARTH EXPLORATION-SATELLITE (Earth-to-space) METEOROLOGICAL SATELLITE (Earth-to-space) Fixed Mobile except aeronautical mobile	402–403 METEOROLOGICAL AIDS EARTH EXPLORATION-SATELLITE (Earth-to-space) METEOROLOGICAL SATELLITE (Earth-to-space) Fixed Mobile except aeronautical mobile	402–403 METEOROLOGICAL AIDS (radiosonde) US70 Earth Exploration-Satellite (Earth-to-space) Meteorological Satellite (Earth-to-space) US345	402–403 METEOROLOGICAL AIDS (radiosonde) US70 Earth Exploration-Satellite (Earth-to-space) Meteorological Satellite (Earth-to-space) US345	Personal (95)	Medical Implant Communications (MICS)
403–406 METEOROLOGICAL AIDS Fixed Mobile except aeronautial mobile	403–406 METEOROLOGICAL AIDS Fixed Mobile except aeronautial mobile	403–406 METEOROLOGICAL AIDS Fixed Mobile except aeronautial mobile	403–406 METEOROLOGICAL AIDS (radiosonde) US70 US345	403–406 METEOROLOGICAL AIDS (radiosonde) US70 US345	Personal (95)	Medical Implant Communications (MICS)
*	*	*	*	*	*	*

UNITED STATES (US) FOOTNOTES

* * * * *

US345 In the band 402–405 MHz, the mobile, except mobile aeronautical, service is allocated on a secondary basis and is limited to, with the exception of military tactical mobile stations, Medical Implant Communications Service (MICS) operations. MICS stations are authorized by rule on the condition that harmful interference is not caused to stations in the meteorological aids, meteorological-satellite, and earth exploration-satellite services, and that MICS stations accept interference from stations in the meteorological aids, meteorological-satellite, and earth exploration-satellite services.

* * * * *

5. Section 2.1204 is amended by adding paragraph (a)(9) to read as follows:

§ 2.1204 Import conditions.

* * * * *

(a) * * *

(9) The radio frequency device is a medical implant transmitter inserted in a person granted entry into the United States or is a medical implant programmer/controller transmitter associated with such an implanted transmitter, provided, however that the transmitters covered by this provision otherwise comply with the technical requirements applicable to transmitters authorized to operate in the Medical Implant Communications Service under part 95 of this chapter. Such transmitters are permitted to be imported without the issuance of a grant of equipment authorization only for the personal use of the person in whom the medical implant transmitter has been inserted.

PART 95—PERSONAL RADIO SERVICES

6. The authority for part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

7. Section 95.401 is amended by adding paragraph (d) to read as follows:

§ 95.401 (CB Rule 1) What are the Citizens Band Radio Services?

* * * * *

(d) The Medical Implant Communications Service (MICS)—an ultra-low power radio service for the transmission of non-voice data for the purpose of facilitating diagnostic and/or therapeutic functions involving implanted medical devices. The rules for this service are contained in subpart I of this part.

8. Section 95.601 is amended by revising the last sentence in the undesignated text to read as follows:

§ 95.601 Basis and purpose.

* * * The Personal Radio Services are the GMRS (General Mobile Radio Service)—subpart A, the Family Radio Service (FRS)—subpart B, the R/C (Radio Control Radio Service)—subpart C, the CB (Citizens Band Radio Service)—subpart D, the Low Power Radio Service (LPRS)—subpart G, and the Medical Implant Communications Service (MICS)—subpart I.

9. Section 95.603 is amended by adding paragraph (f) to read as follows:

§ 95.603 Certification required.

* * * * *

(f) Each Medical Implant Communications Service transmitter (a transmitter that operates or is intended to operate in the MICS) must be certificated except for medical implant transmitters that are not marketed for use in the United States, but which otherwise comply with the MICS technical requirements and are operated in the United States by individuals who have traveled to the United States from abroad. Medical implant transmitters (as defined in Appendix 1 to subpart E of part 95 of this chapter) are subject to the

radiofrequency radiation exposure requirements specified in §§ 1.1307 and 2.1093 of this chapter, as appropriate. Applications for equipment authorization of devices operating under this section must contain a finite difference time domain (FDTD) computational modeling report showing compliance with these provisions for fundamental emissions. The Commission retains the discretion to request the submission of specific absorption rate measurement data.

10. Section 95.605 is amended by revising the first paragraph of the undesignated text to read as follows:

§ 95.605 Certification procedures.

Any entity may request certification for its transmitter when the transmitter is used in the GMRS, R/C, CB, IVDS, LPRS, or MICS following the procedures in part 2 of this chapter. Medical implant transmitters shall be tested for emissions and EIRP limit compliance while enclosed in a medium that simulates human body tissue in accordance with the procedures in § 95.639(g). Frequency stability testing for MICS transmitters shall be performed over the temperature range set forth in § 95.628.

* * * * *

11. Section 95.628 is added to read as follows:

§ 95.628 MICS Transmitter.

(a) *Frequency monitoring.* Medical implant programmer/control transmitters must incorporate a mechanism for monitoring the channel or channels that the MICS system devices intend to occupy. The monitoring system antenna shall be the antenna normally used by the programmer/control transmitter for a communications session. Before a medical implant programmer/control transmitter initiates a MICS communications session, the following access criteria must be met:

(1) The monitoring system bandwidth measured at its 20 dB down points must be equal to or greater than the emission bandwidth of the intended transmission.

(2) Within 5 seconds prior to initiating a communications session, circuitry associated with a medical implant programmer/control transmitter must monitor the channel or channels the MICS system devices intend to occupy for a minimum of 10 milliseconds per channel.

(3) Based on use of an isotropic monitoring system antenna, the monitoring threshold power level must not be more than 10logB(Hz) − 150 (dBm/Hz) + G(dBi) where B is the emission bandwidth of the MICS communication session transmitter having the widest emission and G is the medical implant programmer/control transmitter monitoring system antenna gain relative to an isotropic antenna. For purposes of showing compliance with the above provision, the above calculated threshold power level must be increased or decreased by an amount equal to the monitoring system antenna gain above or below the gain of an isotropic antenna, respectively.

(4) If no signal in a MICS channel above the monitoring threshold power level is detected, the medical implant programmer/control transmitter may initiate a MICS communications session involving transmissions to and from a medical implant device on that channel. The MICS communications session may continue as long as any silent period between consecutive data transmission bursts does not exceed 5 seconds. If a channel meeting the criteria in paragraph (a)(3) of this section is unavailable, the channel with the lowest ambient power level may be accessed.

(5) When a channel is selected prior to a MICS communications session, it is permissible to select an alternate channel for use if communications is interrupted, provided that the alternate channel selected is the next best choice using the above criteria. The alternate channel may be accessed in the event a communications session is interrupted by interference. The following criteria must be met:

(i) Before transmitting on the alternate channel, the channel must be monitored for a period of at least 10 milliseconds.

(ii) The detected power level during this 10 millisecond or greater monitoring period must be no higher than 6 dB above the power level detected when the channel was chosen as the alternate channel.

(iii) In the event that this alternate channel provision is not used by the MICS system or if the criteria in (i) and (ii) are not met, a channel must be selected using the access criteria specified in paragraphs (a)(1) through (a)(4) of this section.

(6) As used in this section, the following definitions apply:

(i) *Emission bandwidth*—Measured as the width of the signal between the points on either side of carrier center frequency that are 20 dB down relative to the maximum level of the modulated carrier. Compliance will be determined using instrumentation employing a peak detector function and a resolution bandwidth approximately equal to 1% of the emission bandwidth of the device under test.

(ii) *MICS channel*—Any continuous segment of spectrum that is equal to the emission bandwidth of the device with the largest bandwidth that is to participate in a MICS communications session. (Note: The rules do not specify a channeling scheme for use by MICS systems.)

(iii) *MICS communications session*—A collection of transmissions, that may or may not be continuous, between MICS system devices.

(b) MICS communications sessions initiated by a medical implant event are not required to use the access criteria set forth in paragraph (a) of this section.

(c) Stations may operate on any of the frequencies in the band 402–405 MHz, provided that the out-of-band emissions are attenuated in accordance with § 95.635.

(d) The authorized bandwidth of the emission from a MICS station shall not exceed 300 kHz, and no communications session involving MICS stations shall use more than a total of 300 kHz of bandwidth during such a session. Note: This provision does not preclude full duplex or half duplex communications provided that the total amount of bandwidth utilized by all of the MICS channels employed in such a MICS communications session does not exceed 300 kHz.

(e) Each transmitter in the MICS service must maintain a frequency stability of +/−100 ppm of the operating frequency over the range:

(1) 25°C to 45°C in the case of medical implant transmitters; and

(2) 0°C to 55°C in the case of medical implant programmer/control transmitters.

(f) The provisions of this section shall not be used to extend the range of spectrum occupied over space or time for the purpose denying fair access to spectrum for other MICS systems.

12. Section 95.631 is amended by adding paragraph (h) to read as follows:

§ 95.631 Emission types.

* * * * *

(h) A MICS station may transmit any emission type appropriate for communications in this service. Voice communications, however, are prohibited.

13. Section 95.633 is amended by adding paragraph (e) to read as follows:

§ 95.633 Emission bandwidth.

* * * * *

(e) For transmitters in the MICS:

(1) The maximum authorized emission bandwidth is 300 kHz.

(2) Lesser authorized emission bandwidths may be employed, provided that the unwanted emissions are

attenuated as provided in § 95.635 and that the power radiated in any 300 kHz bandwidth does not exceed 25 microwatts EIRP. See §§ 95.605 and 95.639(g) regarding power measurement procedures.

(3) Emission bandwidth will be determined by measuring the width of the signal between two points, one below the carrier center frequency and one above the carrier center frequency, that are 20 dB down relative to the maximum level of the modulated carrier. Compliance with the emission bandwidth limit is based on the use of measurement instrumentation employing a peak detector function with an instrument resolution bandwidth approximately equal to 1.0 percent of the emission bandwidth of the device under measurement.

14. Section 95.635 is amended by revising paragraph (b) and adding paragraph (d) to read as follows:

§ 95.635 Unwanted radiation.

* * * * *

(b) The power of each unwanted emission shall be less than TP as specified in the applicable paragraphs listed in the following table:

Transmitter	Emission type	Applicable paragraphs (b)
GMRS	A1D, A3E, F1D, G1D, F3E, G3E with filtering	(1), (3), (7).
	A1D, A3E, F1D, G1D, F3E, G3E without filtering	(5), (6), (7).
	H1D, J1D, R1D, H3E, J3E, R3E	(2), (4), (7).
FRS	F3E with filtering	(1), (3), (7).
R/C:		
27 MHz	As specified in § 95.631(b)	(1), (3), (7).
72–76 MHz	As specified in § 95.631(b)	(1), (3), (7), (10), (11), (12).
CB	A1D, A3E	(1), (3), (8), (9).
	H1D, J1D, R1D, H3E, J3E, R3E	(2), (4), (8), (9).
	A1D, A3E type accepted before September 10, 1976	(1), (3), (7).
	H1D,J1D, R1D, H3E, J3E, R3E type accepted before September 10, 1986.	(2), (4), (7).
LPRS	As specified in paragraph (c).	
MICS	As specified in paragraph (d).	

Note 1—Filtering noted for GMRS and FRS transmitters refers to the requirement in § 95.637(b).

Note 2—Unwanted R radiation may be stated in mean power or in peak envelope power, provided it is stated in the same parameter as T.

Note 3—Paragraphs (b)(1), (b)(10), (b)(11), and (b)(12) of this section apply to transmitters operating in the 72–76 MHz band that are manufactured or imported into the United States on or after March 1, 1992, or marketed or sold on or after March 1, 1993. Paragraphs (b)(1), (b)(3), and (b)(7) of this section apply to transmitters operating in the 72–76 MHz band manufactured or imported into the United States before March 1, 1992, or marketed before March 1, 1993.

Note 4—If spurious or harmonic emissions result in harmful interference (any transmission, radiation or induction that endangers the functioning of a radionavigation or other safety service or seriously degrades, obstructs or repeatedly interrupts a radiocommunication service operating in accordance with applicable laws, treaties and regulations), the FCC may, at its discretion, require appropriate technical changes in the station equipment to alleviate the interference, including the use of a low pass filter between the transmitter antenna terminals and the antenna feed line.

(1) At least 25 dB (decibels) on any frequency removed from the center of the authorized bandwidth by more than 50% up to and including 100% of the authorized bandwidth.

(2) At least 25 dB on any frequency removed from the center of the authorized bandwidth by more than 50% up to and including 150% of the authorized bandwidth.

(3) At least 35 dB on any frequency removed from the center of the authorized bandwidth by more than 100% up to and including 250% of the authorized bandwidth.

(4) At least 35 dB on any frequency removed from the center of the authorized bandwidth by more than 150% up to and including 250% of the authorized bandwidth.

(5) At least 83 $\log_{10}$ (f_d/5) dB on any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz), of more than 5 kHz up to and including 10 kHz.

(6) At least 116 $\log_{10}$ (f_d/6.1) dB, or if less, 50 + 10 $\log_{10}$ (T) dB, on any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz), of more than 10 kHz up to and including 250% of the authorized bandwidth.

(7) At least 43 + 10 $\log_{10}$ (T) dB on any frequency removed from the center of the authorized bandwidth by more than 250%.

(8) At least 53 + 10 $\log_{10}$ (T) dB on any frequency removed from the center of the authorized bandwidth by more than 250%.

(9) At least 60 dB on any frequency twice or greater than twice the fundamental frequency.

(10) At least 45 dB on any frequency removed from the center of the authorized bandwidth by more than 100% up to and including 125% of the authorized bandwidth.

(11) At least 55 dB on any frequency removed from the center of the authorized bandwidth by more than 125% up to and including 250% of the authorized bandwidth.

(12) At least 56 + 10 $\log_{10}$ (T) dB on any frequency removed from the center of the authorized bandwidth by more than 250%.

* * * * *

(d) For transmitters designed to operate in the MICS, emissions shall be attenuated in accordance with the following:

(1) Emissions more than 250 kHz outside of the MICS band (402–405 MHz) shall be attenuated to a level no greater than the following field strength limits:

Frequency (MHz)	Field strength (μV/m)	Measurement distance (m)
30–88	100	3
88–216	150	3
216–960	200	3
960 and above	500	3

Note—At band edges, the tighter limit applies.

(2) The emission limits shown in the above table are based on measurements employing a CISPR quasi-peak detector except that above 1 GHz, the limit is based on measurements employing an average detector. Measurements above 1 GHz shall be performed using a minimum resolution bandwidth of 1 MHz. See also § 95.605.

(3) The emissions from a MICS transmitter must be measured to at least the tenth harmonic of the highest

fundamental frequency designed to be emitted by the transmitter.

(4) Emissions within the MICS band (402–405 MHz) more than 150 kHz away from the center frequency of the spectrum the transmission is intended to occupy, will be attenuated below the transmitter output power by at least 20 dB. Compliance with this limit is based on the use of measurement instrumentation employing a peak detector function with an instrument resolution bandwidth approximately equal to 1.0 percent of the emission bandwidth of the device under measurement.

(5) Emissions 250 kHz or less that are above and below the MICS band (402–405 MHz) will be attenuated below the maximum permitted output power by at least 20 dB. Compliance with this limit is based on the use of measurement instrumentation employing a peak detector function with an instrument resolution bandwidth approximately equal to 1.0 percent of the emission bandwidth of the device under measurement.

15. Section 95.639 is amended by adding paragraph (f) to read as follows:

§ 95.639 Maximum transmitter power.

* * * * *

(f) In the MICS the following limits apply:

(1) The maximum EIRP for MICS transmitter stations is 25 microwatts. The antenna associated with any MICS transmitter must be supplied with the transmitter and shall be considered part of the transmitter subject to equipment authorization. Compliance of any MICS transmitter with the 25 microwatts EIRP limit may be determined by measuring the radiated field from the equipment under test at 3 meters and calculating the EIRP. The equivalent radiated field strength at 3 meters for 25 microwatts EIRP is 18.2 mV/meter when measured on an open area test site, or 9.1 mV/meter when measured on a test site equivalent to free space such as a fully anechoic test chamber. In either case, compliance is based on measurements using a peak detector function and measured over an interval of time when transmission is continuous and at its maximum power level. In lieu of using a peak detector function, instrumentation techniques set forth in ANSI C63.17–1998, Section 6.1.2.2.1 or Section 6.1.2.2.2 may be used in determining compliance with the above specifications.

(2) For a transmitter intended to be implanted in a human body, the following test fixture must be used to simulate operation of the implant under actual operating conditions. See § 95.605.

(i) For measurement purposes to determine compliance with emission limits, the radiating characteristics of an implant transmitter placed in a test fixture should approximate those of an implant transmitter placed in a human body. An appropriate human torso simulator for testing medical implant transmitters consists of a cylindrical Plexiglas container with a size of 30 cm by 76 cm with a sidewall thickness of 0.635 cm. It must be completely filled with a material that is sufficiently fluidic that it will flow around the implant without any voids. The dielectric and conductivity properties of this material must match the dielectric and conductivity properties of human muscle tissue at 403.5 MHz. All emissions measurements will be made using the above specification at a nominal temperature of 20–25°C. Simple saline solutions do not meet the above criteria. A mounting grid for the implant inside the container must be provided that permits the radiating element or elements of the implant to be positioned vertically and horizontally. The grid should also support any additional implant leads associated with the therapeutic function in a fixed repeatable manner. The implant must be mounted 6 cm from the sidewall and centered vertically within the container. The above fixture shall be placed on a turntable such that the implant transmitter will be located at a nominal 1.5-meter height above ground and at a 3-meter distance from the measurement antenna. Radiated emissions measurements shall then be performed to insure compliance with the applicable technical specifications.

(ii) A formula for a suitable tissue substitute material is defined in the paper ''Simulated Biological Materials for Electromagnetic Radiation Absorption Studies'' by G. Hartsgrove, A. Kraszewski, and A. Surowiec as published in ''Bioelectromagnetics 8:29–36 (1987)''.

(3) The power radiated in any 300 kHz bandwidth shall not exceed 25 microwatts EIRP. See §§ 95.633(e) and 95.639(g).

16. Section 95.649 is revised to read as follows:

§ 95.649 Power capability.

No FRS, R/C, CB, LPRS, or MICS transmitter shall incorporate provisions for increasing its transmitter power to any level in excess of the limits specified in § 95.639.

17. Section 95.651 is revised to read as follows:

§ 95.651 Crystal control required.

All transmitters used in the Personal Radio Services must be crystal controlled, except an R/C station that transmits in the 26–27 MHz frequency band, a FRS unit, a LPRS unit, or a MICS transmitter.

18. APPENDIX 1 TO SUBPART E TO PART 95—GLOSSARY OF TERMS is revised to read as follows:

Appendix 1 to Subpart E to Part 95—Glossary of Terms

The definitions used in part 95, Subpart E are:

Authorized bandwidth. Maximum permissible bandwidth of a transmission.

Carrier power. Average TP during one unmodulated RF cycle.

CB. Citizens Band Radio Service.

CB transmitter. A transmitter that operates or is intended to operate at a station authorized in the CB.

Channel frequencies. Reference frequencies from which the carrier frequency, suppressed or otherwise, may not deviate by more than the specified frequency tolerance.

Crystal. Quartz piezo-electric element.

Crystal controlled. Use of a crystal to establish the transmitted frequency.

dB. Decibels.

EIRP. Effective Isotropic Radiated Power. Antenna input power times gain for free-space or in-tissue measurement configurations required by MICS, expressed in watts, where the gain is referenced to an isotropic radiator.

FCC. Federal Communications Commission.

Filtering. Refers to the requirement in § 95.633(b).

FRS. Family Radio Service.

GMRS. General Mobile Radio Service.

GMRS transmitter. A transmitter that operates or is intended to operate at a station authorized in the GMRS.

Harmful interference. Any transmission, radiation or induction that endangers the functioning of a radionavigation or other safety service or seriously degrades, obstructs or repeatedly interrupts a radiocommunication service operating in accordance with applicable laws, treaties and regulations.

Mean power. TP averaged over at least 30 cycles of the lowest modulating frequency, typically 0.1 seconds at maximum power.

MICS. Medical Implant Communications Service.

Medical implant device. Apparatus that is placed inside the human body for the purpose of performing diagnostic or therapeutic functions.

Medical implant event. An occurrence or the lack of an occurrence recognized by a medical implant device, or a duly authorized health care professional, that requires the transmission of data from a medical implant transmitter in order to protect the safety or well-being of the person in whom the medical implant transmitter has been implanted.

Medical implant communications service (MICS) transmitter. A transmitter authorized to operate in the MICS.

Medical implant programmer/control transmitter. A MICS transmitter that operates or is designed to operate outside of a human body for the purpose of communicating with a receiver connected to a medical implant device.

Medical implant transmitter. A MICS transmitter that operates or is designed to operate within a human body for the purpose of facilitating communications from a medical implant device.

Peak envelope power. TP averaged during one RF cycle at the highest crest of the modulation envelope.

R/C. Radio Control Radio Service.

R/C transmitter. A transmitter that operates or is intended to operate at a station authorized in the R/C.

RF. Radio frequency.

Transmitter. Apparatus that converts electrical energy received from a source into RF energy capable of being radiated.

TP. RF transmitter power expressed in W, either mean or peak envelope, as measured at the transmitter output antenna terminals.

W. Watts.

19. Section 95.1019 is revised to read as follows:

§ 95.1019 Marketing limitations.

Transmitters intended for operation in the LPRS may be marketed and sold only for those uses described in § 95.1009.

Subpart H—[Reserved]

20. Subpart H is added and reserved.

21. Subpart I is added to read as follows:

Subpart I—Medical Implant Comminications (MICS)

Sec.

95.1201 Eligibility.
95.1203 Authorized locations.
95.1205 Station identification.
95.1207 Station inspection.
95.1209 Permissible communications.
95.1211 Channel use policy.
95.1213 Antennas.
95.1215 Disclosure policies.
95.1217 Labeling requirements.
95.1219 Marketing limitations.

§ 95.1201 Eligibility.

Operation in the MICS is permitted by rule and without an individual license issued by the FCC. A person is permitted to operate medical implant transmitters connected to medical implant devices that have been implanted in that person by a duly authorized health care professional and medical implant programmer/control transmitters associated with their medical implant transmitter(s). Duly authorized health care professionals are permitted by rule to operate MICS transmitters. Manufacturers of medical implant devices and MICS transmitters and their representatives are authorized to operate transmitters in this service for the purpose of demonstrating such equipment to duly authorized health care professionals. No entity that is a foreign government or which is acting in its capacity as a representative of a foreign government is eligible to operate a MICS transmitter. The term ''duly authorized health care professional'' means a physician or other individual authorized under state or federal law to provide health care services using medical implant devices. Operations that comply with the requirements of this part may be conducted under manual or automatic control.

§ 95.1203 Authorized locations.

MICS operation is authorized anywhere CB station operation is authorized under § 95.405.

§ 95.1205 Station Identification.

A MICS station is not required to transmit a station identification announcement.

§ 95.1207 Station inspection.

All non-implanted MICS apparatus must be made available for inspection upon request by an authorized FCC representative. Persons operating implanted medical implant transmitters shall cooperate reasonably with duly authorized FCC representatives in the resolution of interference.

§ 95.1209 Permissible communications.

(a) Except for the purposes of testing and for demonstrations to health care professionals, medical implant programmer/control transmitters may transmit only operational, diagnostic and therapeutic information associated with a medical implant device that has been implanted by a duly authorized health care professional.

(b) Except in response to a medical implant event, no medical implant transmitter shall transmit except in response to a transmission from a medical implant programmer/control transmitter or a non-radio frequency actuation signal generated by a device external to the body in which the medical implant transmitter is implanted or is to be implanted.

(c) Medical implant programmer/control transmitters may be interconnected with other telecommunications systems including the public switched telephone network.

(d) Medical implant programmer/control transmitters may transmit during a MICS communications session, as defined in § 95.628, for the purpose of facilitating MICS system operation for no more than 5 seconds without the communications of data.

(e) Medical implant programmer/control transmitters may not be used to relay information to a receiver that is not included with a medical implant device. Wireless retransmission of information intended to be transmitted by a medical implant programmer/control transmitter or information received from a medical implant transmitter shall be conducted using other radio services that operate in spectrum outside of the MICS band.

§ 95.1211 Channel use policy.

(a) The channels authorized for MICS operation by this part of the FCC Rules are available on a shared basis only and will not be assigned for the exclusive use of any entity.

(b) Those using MICS transmitters must cooperate in the selection and use of channels in order to reduce interference and make the most effective use of the authorized facilities. Channels must be selected in an effort to avoid interference to other MICS transmissions. See § 95.628.

(c) Operation is subject to the condition that no harmful interference is caused to stations operating in the 400.150–406.000 MHz band in the Meteorological Aids, Meteorological Satellite, or Earth Exploration Satellite Services. MICS stations must accept any interference from stations operating in the 400.150–406.000 MHz band in the Meteorological Aids, Meteorological Satellite, or Earth Exploration Satellite Services.

§ 95.1213 Antennas.

No antenna for a medical implant programmer/control transmitter shall be configured for permanent outdoor use, provided, however, that any antenna used outdoors shall not be affixed to any structure for which the height to the tip of the antenna will exceed three (3) meters (9.8 feet) above ground.

§ 95.1215 Disclosure polices.

(a) Manufacturers of MICS transmitters must include with each transmitting device the following statement: ''This transmitter is authorized by rule under the Medical Implant Communications Service (part 95 of the FCC Rules) and must not cause harmful interference to stations operating in the 400.150–406.000 MHz band in the Meteorological Aids (*i.e.* transmitters and receivers used to communicate weather data), the Meteorological Satellite, or the Earth Exploration Satellite Services and must accept interference that may be caused by such aids, including interference that may cause undesired operation. This transmitter shall be used only in accordance with the FCC Rules governing the Medical Implant Communications Service. Analog and digital voice communications are prohibited. Although this transmitter has been approved by the Federal Communications Commission, there is no guarantee that it will not receive

interference or that any particular transmission from this transmitter will be free from interference.''

§ 95.1217 Labeling requirements.

(a) Medical implant programmer/controller transmitters shall be labeled as provided in part 2 of this chapter and shall bear the following statement in a conspicuous location on the device:

This device may not interfere with stations operating in the 400.150–406.000 MHz band in the Meteorological Aids, Meteorological Satellite, and Earth Exploration Satellite Services and must accept any interference received, including interference that may cause undesired operation.

(b) Where a medical implant programmer/control transmitter is constructed in two or more sections connected by wire and marketed together, the statement specified in this section is required to be affixed only to the main control unit.

(c) Medical implant transmitters shall be identified with a serial number. The FCC ID number associated with the transmitter and the information required by § 2.925 of the FCC Rules may be placed in the instruction manual for the transmitter and on the shipping container for the transmitter, in lieu of being placed directly on the transmitter.

§ 95.1219 Marketing limitations.

Transmitters intended for operation in the MICS may be marketed and sold only for those uses described in § 95.1209 of this part.

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DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 808, 812, 813, 852 and 853

RIN 2900–AJ16

VA Acquisition Regulation: Simplified Acquisition Procedures

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs Acquisition Regulation (VAAR) concerning simplified acquisition procedures. It amends VAAR provisions to conform to the Federal Acquisition Regulation, to update references and section titles, and to remove obsolete material. It also makes non-substantive changes for purposes of clarity.

EFFECTIVE DATE: December 15, 1999.

FOR FURTHER INFORMATION CONTACT: Don Kaliher, Acquisition Policy Team (95A), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420, telephone number (202) 273–8819.

SUPPLEMENTARY INFORMATION: On June 4, 1999, we published in the **Federal Register** (64 FR 29981) a proposal to amend the Department of Veterans Affairs Acquisition Regulation (VAAR) to make changes relating to simplified acquisition procedures (VAAR part 813 and related parts). Comments were solicited concerning the proposal for 60 days, ending August 3, 1999. We did not receive any comments. The information presented in the proposed rule document still provides a basis for this final rule. Based on the rationale set forth in this document and in the proposed rule document, we are adopting the provisions of the proposed rule as a final rule with no changes, other than non-substantive changes for purposes of clarity.

The Secretary hereby certifies that this final rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This final rule does not make any substantive changes to the VA Acquisition Regulation and would have little, if any, impact on small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

List of Subjects

48 CFR Part 808

Government procurement, Utilities.

48 CFR Parts 812, 813 and 853

Government procurement.

48 CFR Part 852

Government procurement, Reporting and recordkeeping requirements.

Approved: November 18, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 48 CFR Chapter 8 is amended as follows:

PART 808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

1. The authority citation for part 808 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

808.404–1 [Removed]

2. Section 808.404–1 is removed.

808.404–3 [Removed]

3. Section 808.404–3 is removed.

PART 812—ACQUISITION OF COMMERCIAL ITEMS

4. The authority citation for part 812 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

5. In section 812.301, paragraphs (c)(13), (c)(14), and (c)(15) are redesignated as paragraphs (c)(14), (c)(15), and (c)(16), respectively; newly redesignated paragraph (c)(16) is revised and a new paragraph (c)(13) is added to read as follows:

812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(c) * * *

(13) 852.252–1, Provisions or clauses requiring completion by the offeror or prospective contractor.

* * * * *

(16) 852.270–3, Purchase of shellfish.

* * * * *

PART 813—SIMPLIFIED ACQUISITION PROCEDURES

6. The part heading for part 813 is revised to read as set forth above.

7. The authority citation for part 813 is revised to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

8. Subpart 813.1 is added to read as follows:

Subpart 813.1—Procedures

Subpart 813.5 [Redesignated as Subpart 813.3]

9. Subpart 813.5 is redesignated as subpart 813.3; and the subpart heading is revised to read as follows:

Subpart 813.3—Simplified Acquisition Methods

10. Section 813.302 and heading are added to read as follows:

813.302 Purchase orders.

813.305–2 [Redesignated as 813.307]

11. Section 813.505–2 is redesignated as 813.307 and is transferred to subpart 813.3; the section heading and paragraphs (a) and (e) are revised to read as follows:

813.307 Forms.

(a) VA Form 90–2138, Order for Supplies or Services, VA Form 90–2139,

Order for Supplies or Services (Continuation), VA Form 90–2138–ADP, Purchase Order for Supplies or Services, and VA Form 2139–ADP, Order for Supplies and Services (Continuation), provide in one set of forms a purchase or delivery order, vendor's invoice, and receiving report. They will be used in lieu of but in the same manner as Optional Form 347, Order for Supplies or Services, Optional Form 348, Order for Supplies or Services Schedule—Continuation, and Standard Form 1449, Solicitation/Contract/Order for Commercial Items.

* * * * *

(e) VA Form 10–2421, Prosthetics Authorization and Invoice, will be used for indicated procurements not in excess of $300.

813.506–70 [Redesignated as 813.106–70]

12. Section 813.506–70 is redesignated as 813.106–70 and is transferred to the beginning of subpart 813.1; and is amended by removing ''13.106(c)'' and adding, in its place, ''13.106–3''.

813.507 [Redesignated as 813.302–5]

13. Section 813.507 is redesignated as 813.302–5 and is transferred to subpart 813.3 following section 813.302; and is revised to read as follows:

813.302–5 Clauses.

When using VA Forms 90–2138 or 90–2138–ADP for maintenance contracts involving services performed on Government property which have the potential for property damage and liability claims, the contracting officer shall insert in the purchase order the Contractor Responsibilities clause found at 852.237–70. Applicable maintenance contracts include but are not limited to window washing, pest control, and elevator maintenance.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

14. The authority citation for part 852 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

15. Section 852.102 is added to read as follows:

852.102 Incorporating provisions and clauses by reference.

(a) As authorized by FAR 52.102(c), any 48 CFR chapter 8 (VAAR) provision or clause may be incorporated in a quotation, solicitation, or contract by reference, provided the contracting officer complies with the requirements stated in FAR 52.102(c)(1), (c)(2), and (c)(3). To ensure compliance with FAR 52.102(c)(1) and (c)(2), the contracting officer shall insert the provision found at 852.252–1, Provisions or clauses requiring completion by the offeror or prospective contractor, in full text in a quotation, solicitation, or contract if the quotation, solicitation, or contract incorporates by reference a FAR or 48 CFR chapter 8 (VAAR) provision or clause that requires completion by the offeror or prospective contractor and submittal with the quotation or offer.

(b) For any FAR or 48 CFR chapter 8 (VAAR) provision or clause that requires completion by the contracting officer, the contracting officer shall, as a minimum, insert in the quotation, solicitation, or contract the title of the provision or clause and the full text of the paragraph that requires completion. The balance of the provision or clause may be incorporated by reference.

(c) If one or more FAR or 48 CFR chapter 8 (VAAR) provisions, or portions thereof, are incorporated in a quotation or solicitation by reference, the contracting officer shall insert in the quotation or solicitation the provision found at FAR 52.252–1, Solicitation Provisions Incorporated by Reference.

(d) If one or more FAR or 48 CFR chapter 8 (VAAR) clauses, or portions thereof, are incorporated in a quotation, solicitation, or contract by reference, the contracting officer shall insert in the quotation, solicitation, or contract the clause found at FAR 52.252–2, Clauses Incorporated by Reference.

(e) If one or more FAR provisions or clauses, or portions thereof, are incorporated in a quotation, solicitation, or contract by reference, the contracting officer shall insert in the FAR provision or clause required by paragraph (c) or (d) of this section the following Internet address: http://www.arnet.gov/far/

(f) If one or more 48 CFR chapter 8 (VAAR) provisions or clauses, or portions thereof, are incorporated in a quotation, solicitation, or contract by reference, the contracting officer shall insert in the FAR provision or clause required by paragraph (c) or (d) of this section the following Internet address: http://www.va.gov/oa&mm/vaar/

16. Section 852.252–1 is added to read as follows:

852.252–1 Provisions or clauses requiring completion by the offeror or prospective contractor.

As prescribed in 852.102(a), insert the following provision:

PROVISIONS OR CLAUSES THAT REQUIRE COMPLETION BY THE OFFEROR OR PROSPECTIVE CONTRACTOR (DEC 1999)

The following provisions or clauses incorporated by reference in this solicitation must be completed by the offeror or prospective contractor and submitted with the quotation or offer. Copies of these provisions or clauses are available on the Internet at the web sites provided in the provision at FAR 52.252–1, Solicitation Provisions Incorporated by Reference, or the clause at FAR 52.252–2, Clauses Incorporated by Reference. Copies may also be obtained from the contracting officer.

[*Contracting officer shall list all FAR and 48 CFR Chapter 8 (VAAR) provisions and clauses incorporated by reference that must be completed by the offeror or prospective contractor and submitted with the quotation or offer.*]

(End of provision)

PART 853—FORMS

17. The authority citation for part 853 is revised to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

Subpart 853.2—Prescription of Forms

18. Section 853.213 is revised to read as follows:

853.213 Simplified acquisition procedures.

The following forms are prescribed as stated in this section for use in simplified acquisition procedures, orders under existing contracts or agreements, orders from required sources of supplies and services, and orders for other supplies or services:

(a) VA Forms 90–2138, Order for Supplies or Services, or 90–2138–ADP, Purchase Order for Supplies or Services, shall be used as stated in 813.307. They will be used in lieu of Optional Form 347, Order for Supplies and Services, or Standard Form 1449, Solicitation/Contract/Order for Commercial Items.

(b) The following forms are for use for obtaining indicated medical and dental services within the limitations prescribed in 813.307:

(1) VA Form 10–7078, Authorization and Invoice for Medical and Hospital Services.

(2) VA Form 10–7079, Request for Outpatient Medical Services.

(3) VA Form 10–2570d, Dental Record, Authorization and Invoice for Outpatient Services.

(c) VA Form 10–2511, Authority and Invoice for Travel by Ambulance or Other Hired Vehicle, will be used as prescribed in 813.307.

(d) VA Form 10–2421, Prosthetics Authorization and Invoice, will be used for indicated procurements not in excess of $300 as prescribed in 813.307.

[FR Doc. 99–32405 Filed 12–14–99; 8:45 am]

BILLING CODE 8320–01–P

Proposed Rules

Federal Register
Vol. 64, No. 240
Wednesday, December 15, 1999

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

RIN 3206–AI78

Payments During Evacuation

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations to raise the age requirement for payment of the maximum per diem rate for a dependent of an evacuated civilian employee from age 11 to age 12. This would apply to evacuations in the United States because of natural disasters or for military or other reasons that create an imminent danger to life. This proposed change would make OPM regulations consistent with Department of Defense (DOD) evacuation regulations, which require that an evacuated dependent of a uniformed member be 12 years of age or older to receive the maximum per diem rate.

DATES: Comments must be received on or before January 14, 2000.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415, FAX: (202) 606–0824, or e-mail at payleave@opm.gov.

FOR FURTHER INFORMATION CONTACT: Roger Knadle, (202) 606–2858, FAX: (202) 606–0824, or email at payleave@opm.gov.

SUPPLEMENTARY INFORMATION: Office of Personnel Management (OPM) regulations on payments during evacuation are found in subpart D of 5 CFR part 550. The regulations are based on provisions of law in 5 U.S.C. 5522–5524, 5526, and 5527, and on authority in Executive Order 10982, 3 CFR 1959–1963, p. 502. Evacuation payments under these authorities are made to employees or their dependents, or both, who are ordered to be evacuated because of natural disasters or for military or other reasons that create imminent danger to the lives of the employees or their dependents.

The OPM regulations are intended to provide Governmentwide uniformity in making payments to civilian employees during an evacuation. They apply to civilian Federal employees who are evacuated in the United States. In this regard, OPM is proposing that the definition of *United States area* in § 550.402 be removed and replaced by a new definition of *United States.* The proposed new definition has been updated to delete language excluding the Trust Territory of the Pacific Islands and to include the Commonwealth of the Northern Mariana Islands (formerly the Trust Territory). This is consistent with the fact that the Commonwealth of Puerto Rico is included in the definition. It is also consistent with the Federal Travel Regulation, which authorizes temporary quarters subsistence allowances, real estate allowances, and relocation income tax for the Northern Mariana Islands. The Panama Canal Zone is not included in the new definition of United States, since the Panama Canal Zone will cease to exist at the end of calendar year 1999.

Special allowances, including travel expenses and per diem, may be made to evacuated employees, including payments for their dependents, to offset any direct added expenses that are incurred by the employees as a result of evacuation. Current OPM regulations provide that per diem is authorized for dependents of an evacuated employee at a rate equal to the rate payable for the employee, except that the rate for dependents under 11 years of age is one-half the rate payable to the employee.

The Department of Defense (DOD) has requested that OPM raise the age requirement for payment of the maximum per diem rate for dependents of evacuated civilian employees from age 11 to age 12. This proposed change would make OPM regulations consistent with DOD regulations, which require that an evacuated dependent of a uniformed member be 12 years of age or older to receive the maximum per diem rate. This is true for dependents of uniformed members both within and outside the United States.

The term *uniformed members* means members of the ''uniformed services,'' as defined in 5 U.S.C. 2101. This includes members of the armed forces, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration.

State Department regulations for evacuations from foreign areas currently set an age 12 requirement for payment of the maximum per diem rate during ''travel'' to a safe haven location for dependents of evacuated civilian employees. The State Department regulations also use an age 12 threshold for temporary quarters subsistence allowances and foreign transfer allowances. Similarly, the Federal Travel Regulation uses the age 12 threshold for computing per diem rates for permanent change of station and temporary quarters subsistence expense allowances. However, State Department regulations use age 18 as the threshold for payment of the maximum allowance for meals and incidental expenses (M&IE) for dependents of civilian employees stationed in foreign countries who have been evacuated to safe haven locations. (Note: *subsistence expense allowance* includes amounts that may be paid to employees for lodging, food, and incidental expenses. This is also true of the term *per diem.*)

DOD reports that current requirements establishing different ages for entitlement to the maximum per diem rate for evacuated dependents create confusion and the appearance of inequity. This is particularly true since civilian employees and dependents of uniformed members are often evacuated from the same locations at the same time. DOD employees in personnel and payroll offices sometimes assume that a 12-years-old threshold applies in all cases. This results in erroneous payments and causes DOD personnel to waste time explaining and implementing the different requirements and correcting errors.

OPM agrees that this difference in policy is unnecessary and inequitable and increases administrative complexity and confusion. Therefore, OPM is proposing revisions in § 550.405 consistent with the DOD recommendation.

At the request of DOD, OPM is also proposing a change in § 550.405(b)(1) to require that the maximum per diem rate

be computed using the ''lodgings-plus per diem system.'' This term is defined in section 300–3.1 of the Federal Travel Regulation to mean ''[t]he method of computing per diem allowances for official travel in which the per diem allowance for each travel day is established on the basis of the actual amount the traveler pays for lodging, plus an allowance for meals and incidental expenses (M&IE), the total of which does not exceed the maximum per diem rate for the location concerned.''

E.O. 12866, Regulatory Review

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

Regulatory Flexibility Act

I certify that these regulations would not have a significant impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

U.S. Office of Personnel Management

Janice R. Lachance,

Director.

Accordingly, OPM is proposing to amend subpart D of part 550 of title 5 of the Code of Federal Regulations as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart D—Payments During Evacuation

1. The authority citation for subpart D of part 550 is revised to read as follows:

Authority: 5 U.S.C. 5527; E.O. 10982, 3 CFR, 1959–1963, Comp. p. 502.

2. In § 550.401, paragraph (a) is revised to read as follows:

§ 550.401 Purpose, applicability, authority, and administration.

(a) *Purpose.* This subpart provides regulations to administer subchapter III (except sections 5524a and 5525) of chapter 55 of title 5, United States Code. The regulations provide for Governmentwide uniformity in making payments during an evacuation to employees or their dependents, or both, who are evacuated in the United States because of natural disasters or for military or other reasons that create imminent danger to their lives.

* * * * *

3. In § 550.402, the definition of *United States area* is removed, and a new definition of *United States* is added to read as follows:

§ 550.402 Definitions.

* * * * *

United States means the 50 States, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and any territory or possession of the United States.

4. In section 550.405, paragraphs (a) and (b)(1) are revised to read as follows:

§ 550.405 Determination of special allowances.

* * * * *

(a) The travel expenses and per diem for an evacuated employee and the travel expenses for his or her dependents must be determined in accordance with the Federal Travel Regulation (FTR) and any applicable implementing agency regulations, whether or not the employee or dependents are actually covered by or subject to the FTR. In addition, per diem is authorized for dependents of an evacuated employee at a rate equal to the rate payable to the employee, as determined in accordance with the FTR (except that the rate for dependents under 12 years of age shall be one-half this rate), whether or not the employee or dependents are actually covered by or subject to the FTR. Per diem for an employee and his or her dependents is payable from the date of departure from the evacuated area through the date of arrival at the safe haven, including any period of delay en route that is beyond an evacuee's control or that may result from evacuation travel arrangements.

(b) * * *

(1) The applicable maximum per diem rate must be computed using the ''lodgings-plus per diem system,'' as defined in the FTR, for the employee and each dependent who is 12 years of age or over. One half of such rate must be computed for each dependent under 12 years of age. These maximum rates may be paid for a period not to exceed the first 30 days of evacuation.

* * * * *

[FR Doc. 99–32461 Filed 12–14–99; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1703

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Part 4280

RIN 0570–AA19

Rural Economic Development Loan and Grant Program

AGENCIES: Rural Business-Cooperative Service and Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Business-Cooperative Service (RBS or Agency) is proposing to amend regulations for the Rural Economic Development Loan and Grant (REDLG) Program. This action is part of a reinvention laboratory initiative of the Department of Agriculture and RBS. It is written in a ''Plain Language'' format that is simpler and should improve ease of use by the public and program beneficiaries.

DATES: Written or e-mail comments must be received on or before February 14, 2000 to be assured of consideration. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through February 14, 2000.

ADDRESSES: Submit written comments via the U.S. Postal Service, in duplicate, to the Regulations and Paperwork Management Branch, Attention: Cheryl Thompson, Rural Development, U.S. Department of Agriculture, Stop 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742. Submit written comments via commercial express carrier, in duplicate, to the Regulations and Paperwork Management Branch, Attention: Cheryl Thompson, USDA-Rural Development, 3rd Floor, 300 E. St., SW., Washington, DC 20546. Also, comments may be submitted via the Internet by addressing them to *comments@rus.usda.gov* and must contain the word ''economic'' in the subject line. All written comments will be available for public inspection during regular work hours at the 300 E. St., SW. address listed above.

FOR FURTHER INFORMATION CONTACT: Mark Wyatt, Specialty Lenders Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3225, 1400 Independence Ave. SW, Washington, DC 20250–3225, Telephone (202) 720–2383.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been determined to be significant and has been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Programs Affected

The Catalog of Federal Domestic Assistance number for the program impacted by this action is 10.854, Rural Economic Development Loans and Grants.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, RBS announces its intention to seek OMB approval of the reporting and recordkeeping requirements associated with this proposed rule. The purpose of the REDLG program is to promote rural economic development and job creation projects. Loans are made to Rural Utilities Service (RUS) electric and telecommunications borrowers to finance a wide range of projects, including businesses. Grants are made to establish revolving loan funds. The information requirements contained within the regulation require information from loan and grant applicants and recipients. The information is vital for RBS to make prudent decisions regarding the eligibility of applicants, establish selection priority among competing applicants, ensure compliance with applicable laws and regulations, and evaluate the program. The requirements include information to allow RBS to determine that an applicant is a legally organized entity with authority to enter into contracts and carry out the proposed activities; provide for a description and scope of the proposed activities; include information to provide for evaluation of recipient accomplishments; and require information needed to ensure compliance with Executive Orders.

Public Burden in 7 CFR Part 4280, Subpart A

At this time, RBS is requesting OMB clearance of the following burdens:

Section 4280.16(b). The Agency allows the loan recipient to request a deferment period. This involves a letter or telephone call.

Section 4280.16(d). A former RUS electric borrower that prepaid all their direct or insured electric program loans must provide an irrevocable letter of credit as security for the zero-interest loan because they no longer have property mortgaged to the Government.

Section 4280.20. A RUS borrower that receives a grant to operate a Revolving Loan Fund would need to operate and administer the fund in accordance with its Revolving Loan Fund Plan. This involves reviewing loan applications, preparing loan documents, and disbursing funds.

Section 4280.36(a). RBS uses a copy of the reports prepared by the Rural Utilities Service for its borrowers to ensure compliance with certain laws and Executive Orders. RUS borrowers are required to provide information to the RUS field person to complete the narrative report.

Section 4280.39(a)(2). The RUS borrower must submit an acceptable resolution indicating their request for a loan or grant, agree to provisions of the regulation, etc.

Section 4280.39(a)(4). Assurance as required by 49 CFR 24.4(a). A signed form provides the required assurance statement that any relocations of persons or acquisitions of real property, as part of this completing this project, will be handled in accordance with the law.

Section 4280.39(a)(5). Certification For Contracts, Grants, and Loans is required by 31 U.S.C. 1352.

Section 4280.39(a)(8). Seismic Certification as required by 42 U.S.C. 7701.

Section 4280.39(b)(1) and (2). The narrative portion of the application describes the project, discusses how the project satisfies the selection factors specified in the regulation, and provides information to assist in conducting the environmental review of the project. It also includes a business and project plan and feasibility study.

Section 4280.39(b)(3). A Revolving Loan Fund Plan is required for grants to establish revolving loan funds. The plan governs the use of the funds for the life of the Revolving Loan Fund, how the Revolving Loan Fund will be administered by the RUS borrower, intended uses once the funds revolve and become non-Federal, and the review and approval of loans from the Revolving Loan Fund.

Section 4280.48(a) and (b). Agreements, promissory notes, and opinion of counsel. The recipient of a loan or grant is required to sign legal documents that contain the terms and conditions of the financing provided. For loans, the recipient is also required to execute a promissory note.

Section 4280.49. The RUS borrower is required to submit for approval copies of third party documents between the RUS borrower and the ultimate recipient to determine that the loan funds will be used for approved purposes and in accordance with the regulation. RBS must approve any changes in the third-party documents. The RUS borrower must submit for approval any previously approved document that it wishes to revise. RBS ensures that the revised document is consistent with the approved use of funds and the regulation.

Section 4280.53. The RUS borrowers must submit payments through an electronic method set up to improve the efficiency of Government collections. This involves calling a bank on a touch-tone telephone and entering information.

Section 4280.55(a) and (b). These subsections provide for a list of expenditures for zero-interest loans to determine the proper use of the Government's loan funds. It also requires an itemized list and documentation from the ultimate recipient and record of itemized receipts. This provides a very workable method for the ultimate recipient to provide the RUS borrower with a list of the uses of the loan funds.

Section 4280.56(a). Form RD 4280–1, ''Survey of Recipients of Rural Economic Development Loan and Grant Program.'' This form will record the success of the project that was financed with either a loan or grant. It provides RBS with information on the jobs actually created from the projects financed under this program, and other information that would indicate the success of the project and its impact on the rural economy.

Section 4280.56(b) and (c). For RUS borrowers with existing loans, RBS obtains from RUS a copy of the RUS borrower's audit. RUS borrowers without existing loans need to submit a copy of their audit to RBS. All audits must be conducted in accordance with Generally Accepted Government Auditing Standards. In addition, ultimate recipients may be required to send to RBS a copy of an audit conducted in accordance with 7 CFR part 3052, if the recipient is organized as a non-profit corporation, state government, or local government. Audits pursuant to 7 CFR part 3052 must be submitted only if the amount of federal funds an ultimate recipient spends in 1 year is $300,000 or more. RBS gets a copy of the audit to verify that funds are used for approved purposes.

Section 4280.62. An applicant that receives an adverse decision may appeal the decision. This involves writing a letter requesting an appeal to the National Appeals Division of the United States Department of Agriculture.

Estimate of Burden: Public reporting burden for this collection of information

is estimated to average 3.4 hours per response.

Respondents: RUS borrowers.

Estimated Number of Respondents: 180.

Estimated Number of Responses per Respondent: 9.1.

Estimated Number of Responses: 1,632.

Estimated Total Annual Burden on Respondents: 5,509 hours.

Copies of this information collection may be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, telephone 202–692–0043.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of RBS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (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 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. Comments should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW, Washington, DC 20250–0742. All responses to this notice will be summarized, included in the request for OMB approval, and will become a matter of public record. A comment to OMB is best assured of having full effect if OMB receives it within 30 days of publication of this rule.

Intergovernmental Review

Rural Economic Development Loans and Grants are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. RBS will conduct intergovernmental consultation in the manner delineated in RD Instruction 1940–J, ''Intergovernmental Review of Farmers Home Administration Programs and Activities,'' and in 7 CFR part 3015, subpart V.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given this rule; and (3) administrative proceedings in accordance with the regulations of the Department of Agriculture National Appeals Division (7 CFR part 11) must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' RBS has determined that this proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4374, an Environmental Impact Statement is not required.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RBS must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires RBS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective or least burdensome alternative that achieves the objectives of the rule.

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

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, RBS has determined that this action would not have a significant economic impact on a substantial number of small entities. This regulation only impacts those who choose to participate in the loan and grant program. Small entity applicants will not be impacted to a greater extent than large entity applicants.

Background

The existing regulations for the Rural Economic Development Loan and Grant (REDLG) program are found at 7 CFR part 1703, subpart B, and will be removed upon publication of a final rule.

This action is part of a reinvention laboratory initiative of the Department of Agriculture and Rural Business-Cooperative Service. It is written in a ''Plain Language'' style. The proposed regulation is simpler and should improve ease of use by the public and program beneficiaries. The regulation is in a question and answer format from the perspective of questions from an applicant or recipient under this program.

The REDLG program was originally implemented in 1989 as part of the rural economic development program of Rural Electrification Administration, predecessor to the Rural Utilities Service (RUS). As a result of the United States Department of Agriculture reorganization, responsibility for this program was transferred to the Business Programs under RBS, which provides financing for rural areas. This program is administered at the State level through the Department of Agriculture's Rural Development State Offices.

Since its inception in 1989, this program has had a substantial impact on economic development in rural areas. As of September 30, 1998, it had provided $106 million in loans and $53 million in grants, leveraged $914 million in private capital, and directly created approximately 23,000 new jobs for rural areas.

Under this program, loans and grants are provided to electric and telecommunications utilities that have borrowed funds from RUS. The purpose of the program is to encourage these electric and telecommunications utilities to promote rural economic development and job creation projects. The RUS utility can receive loans to help finance projects such as business start-up costs, business expansion, community development, and business incubator projects. The RUS utility uses the program loan funds to make a pass-through loan to an ultimate recipient such as a business. The RUS utility is responsible for fully repaying its loan to the government even if the ultimate recipient does not repay its loan. The RUS utility uses program grant funds, along with its required contribution, to create a revolving loan fund that it will

operate and administer. Loans are made from the revolving loan fund for a variety of community development projects.

The regulation proposes to simplify the application format, review and selection process, and recipient recordkeeping requirements. A section is proposed to be added covering the appeal of certain adverse decisions under this program.

This program will be available through the Rural Development Mission Area's Service Center Initiative.

List of Subjects

7 CFR Part 1703

Community development, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 4280

Business and industry, Community development, Economic development, Grant programs—housing and community development, Loan programs—housing and community programs, Reporting and recordkeeping requirements, Rural areas.

Therefore, chapters XVII and XLII, title 7, Code of Federal Regulations, are proposed to be amended as follows:

CHAPTER XVII—RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

PART 1703—RURAL DEVELOPMENT

1. The authority citation for part 1703 continues to read as follows:

Authority: 7 U.S.C. 901, *et seq.* and 950aaa, *et seq.*

2. Subpart B of part 1703 is removed and reserved.

CHAPTER XLII—RURAL BUSINESS—COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

3. A new part 4280, consisting only of subpart A (§ § 4280.1 through 4280.100), is added to chapter XLII to read as follows:

PART 4280—RURAL ECONOMIC DEVELOPMENT LOANS AND GRANTS

Subpart A—Rural Economic Development Loan and Grant Program

Sec.

Am I Eligible Under This Program?

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4280.2 What is the Rural Economic Development Loan and Grant Program?
4280.3 Definitions.
4280.4–4280.12 [Reserved]
4280.13 Am I eligible to apply?
4280.14 [Reserved]

What Purposes Are Eligible for Loans?

4280.15 What type of projects may I finance with a zero-interest loan?
4280.16 What would be the terms of my zero-interest loan?
4280.17 If I receive a zero-interest loan, what happens if the ultimate recipient fails to repay me?
4280.18 What security do I need on the loan to the ultimate recipient?

What Purposes Are Eligible for Grants?

4280.19 What can I use a grant to fund?
4280.20 Do I operate and administer the fund?
4280.21 What types of projects may I finance with the initial loans I make from the grant funds I receive?
4280.22 [Reserved]
4280.23 What level of contribution must I make into the fund?
4280.24 How long must my contribution remain in the fund and what happens if the fund is terminated?
4280.25 What must I do in operating the fund?
4280.26 May I use grant funds to cover operating costs of the fund?

What Is Not Eligible for Either a Loan or Grant?

4280.27 What may I not do with program funds?
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What Are the Other Terms and Conditions for Loans and Grants?

4280.29 Do I need supplemental financing?
4280.30 What other restrictions are there on the use of loan or grant funds?
4280.31–4280.35 [Reserved]
4280.36 What are some other laws that contain compliance requirements for this program?

How Do I Apply and How Much May I Request?

4280.37 How do I obtain and submit an application?
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How Are Applications Selected?

4280.42 How is my application evaluated and how are applications selected?
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4280.44 Are there limits on the number of loans or grants I may receive?
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4280.47 What if I am not selected?

What Must I do After Selection?

4280.48 If I am selected, what documents must I execute?
4280.49 What documents must I submit for approval before I can receive my funds?
4280.50 How do I obtain the approved loan or grant funds?
4280.51–4280.52 [Reserved]
4280.53 How do I make loan payments?
4280.54 Do I have to follow certain construction procurement requirements?
4280.55 What are my responsibilities to monitor and review the project?
4280.56 What reports or audits must I and ultimate recipients submit?
4280.57–4280.61 [Reserved]
4280.62 How may I appeal an adverse decision?
4280.63 Exception authority.
4280.64–4280.99 [Reserved]
4280.100 OMB control number. [Reserved]

Authority: 5 U.S.C. 301; 7 U.S.C. 940c; 7 CFR 2.17(a)(21).

Subpart A—Rural Economic Development Loan and Grant Program

Am I Eligible Under This Program?

§ 4280.1 Point of reference.

This subpart is written from the perspective of questions from an RUS borrower, the applicant under this program. Therefore, ''I'', ''My'', and ''Me'' in the question and ''You'' and ''Your'' in the answer in refer to the RUS borrower. ''Our'', ''Us'' and ''We'' in the answer refer to the Agency.

§ 4280.2 What is the Rural Economic Development Loan and Grant Program?

This program provides financing to Rural Utilities Service (RUS) electric or telecommunications borrowers to promote rural economic development and job creation projects.

(a) *Loans.* Zero-interest loans are made to you, the RUS borrower, which you, in turn, relend at a zero interest rate to ultimate recipients. You transmit ultimate recipient repayments of the loan to the U.S. Treasury.

(b) *Grants.* Grants are made to you, the RUS borrower, to establish revolving loan funds and to finance specific projects. You use the grant funds to make zero-interest loans to ultimate recipients to finance the approved projects. The repaid principal on these loans is retained in your revolving loan fund to finance other rural economic development projects.

§ 4280.3 Definitions.

The following definitions are applicable to this subpart:

Advanced telecommunications. Using communications equipment for purposes, such as the simultaneous transmission of images and voice or the electronic transmission of data between multiple sites, that do not consist primarily of providing local exchange voice communications. It does not include providing only local exchange

voice telephone service. Providing the local exchange voice telephone service for an area is not an eligible purpose for funding under this program.

Agency. The Rural Business-Cooperative Service (RBS), an agency of the United States Department of Agriculture, or a successor agency. Agency is referred to in this subpart as ''we'', ''our'', and ''us''.

Agricultural production. The cultivation, production, growing, raising, feeding, housing, breeding, hatching, or managing of crops, plants, animals, or birds, either for fiber, food for human consumption, or livestock feed.

Business incubator. A facility in which small businesses can share premises, support staff, computers, software or hardware, telecommunications terminal equipment, machinery, janitorial services, utilities, or other overhead expenses, and where such businesses can receive technical assistance, financial advice, business planning services or other support.

Conflict of interest. A situation in which your officers, manager, board of directors, their spouses, or children, have a financial interest in the project, including its construction or development.

Cushion of credit payment. A voluntary unscheduled payment made by you pursuant to 7 U.S.C. 940c.

Fund. A revolving loan fund that is created in part with grant funds under this program that makes loans and uses the loan repayments to make subsequent loans until the fund is terminated.

Grant. A transfer of monies from the Agency to the borrower under the program other than a loan.

Independent provider. An entity other than the RUS borrower that is not owned by a subsidiary or an affiliate of the RUS borrower.

Loan. A zero-interest loan made to the RUS borrower under the program.

Program. The Rural Economic Development Loan and Grant Program.

Project. The facility, equipment, or other assistance funded under this program, which is authorized by 7 U.S.C. 940c(b)(2).

Revolving Loan Fund Plan. A plan developed by the RUS borrower that governs the use of the fund established with grants, including how the fund will be administered by the RUS borrower, intended uses once the funds are repaid by the ultimate recipient, and the review and approval of loans from the fund.

Rural area. Any area of the United States not included within the boundaries of any urban area, as defined by the United States Bureau of the Census.

Rural Utilities Service (RUS). The Rural Utilities Service, an agency of the United States Department of Agriculture, or a successor agency.

RUS Borrower. An entity that has borrowed funds under the Rural Electrification Act of 1936. RUS borrower is referred to as ''you'' or ''your'' in the answers and ''I'', ''me'' and ''my'' in the questions.

State. Any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Technical assistance. Managerial, financial and operational analysis and consultation by independent providers to assist project owners in identifying and evaluating problems or potential problems and to provide training that enable project owners to successfully implement, manage, operate and maintain viable projects.

Ultimate recipient. An entity that receives a loan from you and which may be a sole proprietorship, corporation, cooperative, political subdivision of a state or locality, and a Federally recognized Indian tribe.

Uniform Act. The Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (42 U.S.C. 4601–4655).

USDA. The United States Department of Agriculture.

§§ 4280.4–4280.12 [Reserved]

§ 4280.13 Am I eligible to apply?

You are eligible to apply if you are:

(a) A RUS borrower that currently has an outstanding electric or telephone program debt; or

(b) A former RUS electric borrower that prepaid its direct or insured electric program loans.

§ 4280.14 [Reserved]

What Purposes Are Eligible for Loans?

§ 4280.15 What type of projects may I finance with a zero-interest loan?

You may use zero-interest loans to finance the following types of economic development or job creation projects for residents of rural areas:

(a) Start-up costs, including business start-up costs;

(b) Business expansion;

(c) Business incubator projects;

(d) Technical assistance;

(e) Project feasibility studies;

(f) Advanced telecommunications services and computer networks for medical, educational, and job training services; or

(g) Other rural economic development projects that we approve.

§ 4280.16 What would be the terms of my zero-interest loan?

(a) The maximum term of your zero-interest loan is 10 years, including any principal deferment period.

(b) Deferments will automatically be granted on your request as follows:

(1) A deferment of principal of up to 1 year for projects involving a business expansion or established operation; or

(2) A deferment of principal of up to 2 years for projects involving a start-up venture.

(c) You must provide the ultimate recipient the same repayment terms you receive from us.

(d) If you are a former RUS electric borrower that prepaid all your direct or insured electric program loans, you must provide an irrevocable letter of credit or other security, satisfactory to us, for the term of the loan as security for our zero-interest loan.

§ 4280.17 If I receive a zero-interest loan, what happens if the ultimate recipient fails to repay me?

You are responsible for fully repaying the zero-interest loan to us even if the ultimate recipient does not repay you.

§ 4280.18 What security do I need on the loan to the ultimate recipient?

You determine an adequate level of security on your loan to the ultimate recipient to ensure recovery of funds in the event of nonpayment of the loan.

What Purposes Are Eligible for Grants?

§ 4280.19 What can I use a grant to fund?

You use a program grant to partially finance the fund that you will operate and administer. Grants are subject to 7 CFR parts 3015 and 3016, as applicable, and any conflicts between 7 CFR parts 3015 and 3016 and this part will be resolved in favor of the applicable provision of 7 CFR parts 3015 and 3016.

§ 4280.20 Do I operate and administer the fund?

Yes, you operate and administer the fund. You may contract for the daily administration of the fund. However, you must permanently retain all project review and approval authority.

§ 4280.21 What types of projects may I finance with the initial loans I make from the grant funds I receive?

You may make initial loans from the fund only to:

(a) Non-profit entities or public bodies for community development projects

that will create or save employment (but not for projects that are for-profit businesses). Community facilities must serve a wide area of beneficiaries in rural areas and must be owned by the non-profit entity or public body receiving the loan;

(b) Non-profit or for-profit entities, or public bodies for facilities and equipment to provide education and training to residents of rural areas that will facilitate economic development;

(c) Non-profit or for-profit entities, or public bodies for facilities and equipment to provide medical care to residents of rural areas. Equipment and facilities may be funded to enable eligible entities to provide medical training and related professional health care skills to rural health care providers;

(d) Non-profit or for-profit entities, or public bodies for projects which utilize advanced telecommunications or computer networks to facilitate medical or educational services or job training;

(e) Non-profit entities or public bodies for business incubators; or

(f) Non-profit or for-profit entities, or public bodies for project feasibility studies and technical assistance. An independent provider must perform feasibility studies. Qualified entities independent of you and the project owner must provide technical assistance.

§ 4280.22 [Reserved]

§ 4280.23 What level of contribution must I make into the fund?

You must contribute from your funds an amount equal to 20 percent of the amount of our funds. The contribution may not be provided from other federal loans or grants. For example, if you receive a program grant of $200,000, you must deposit $40,000 of your funds into the fund.

§ 4280.24 How long must my contribution remain in the fund and what happens if the fund is terminated?

Your contribution must remain until the fund is terminated. Until the total amount in the fund has been loaned, all loans must be for the purposes contained in § 4280.21. After the total amount in the fund has been loaned for the purposes of § 4280.21, you may make loans from the repayments and any additional amounts you contribute to the fund for any rural economic development purpose eligible under this program in accordance with the Revolving Loan Fund Plan. We may terminate the fund and require repayment of our grant funds if funds being re-lent are not being used according to the Revolving Loan Fund Plan. Termination will be in accordance with 7 CFR part 3015 or 3016, as applicable.

§ 4280.25 What must I do in operating the fund?

Your Revolving Loan Fund Plan must specify that:

(a) The initial loans made from the fund using our funds must carry an interest rate of zero percent and have a maximum term of 10 years;

(b) Loans made from your contribution to the fund and from loan repayments may carry an interest rate greater than zero percent but less than, or equal to, the prime rate. You determine the other repayment terms on these loans;

(c) Until all our funds have been loaned, each loan from the fund will consist of your contribution and our contribution in the ratio of the respective contributions to the fund. The interest rate for our contribution will be at zero percent and the interest rate on your contribution will be based on paragraph (b) of this section. Whether or not multiple projects are involved, the percent of your funds in a loan cannot be less than the percent you have contributed in accordance with § 4280.23. Loan security and recovery of loan losses must provide for the pro rata recovery and distribution between you and us based on the respective amounts of each contribution to the total loan amount for the project;

(d) Loans made from repayments of the initial and subsequent loans may be used for any rural economic development purpose eligible under this program in accordance with the Revolving Loan Fund Plan. These loans may carry an interest rate greater than zero percent. The maximum interest rate is the prime rate; and

(e) Once you have provided assistance with project loans in an amount equal to the grant monies provided by us, future loans from the fund shall not be considered as being derived from federal funds.

§ 4280.26 May I use grant funds to cover operating costs of the fund?

Yes, up to 10 percent of our grant funds may be applied toward operating expenses of the fund. Operating expenses include the costs of administering the fund and technical assistance provided to project owners by independent entities.

What Is Not Eligible for Either a Loan or Grant?

§ 4280.27 What may I not do with program funds?

You may not use zero-interest loans and grants:

(a) For any costs incurred on the project prior to our receipt of your completed application;

(b) For activities that would adversely affect the environment, or activities that limit the choice of reasonable alternatives prior to satisfying our environmental requirements;

(c) To pay off or refinance your existing indebtedness incurred prior to our receipt of your completed application unless approved by us;

(d) For any electric or telephone purpose; or for your electric or telephone operations or other affiliated operations except those purposes contained in § 4280.15(f);

(e) To pay the salaries of your employees or those of your owner, its subsidiaries, or affiliates except for salaries incurred in administering a fund established under this program;

(f) For community antenna television systems or facilities;

(g) For residential purposes such as residential dwellings and land sites; facilities to provide entertainment television; or personal, non-business related vehicles;

(h) Where you have a conflict of interest in the project;

(i) For any purpose when receipt of loan funds is conditioned upon the requirement that the ultimate recipient acquire electric or telephone service from you;

(j) For an otherwise eligible project when any of the revenues of the project are derived from a gambling activity;

(k) For a project that would result in the transfer of existing employment or business activity more than 25 miles from its existing location;

(l) For proposed projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501–3510);

(m) For any illegal activity or any activity involving prostitution; or

(n) For agricultural production.

§ 4280.28 [Reserved]

What Are the Other Terms and Conditions for Loans and Grants?

§ 4280.29 Do I need supplemental financing?

(a) *Is supplemental financing for the project required?* Yes, the ultimate recipient must have supplemental financing at least equal to 20 percent of the zero interest loan and grant.

(b) *What are possible sources?* The owner of the project, banks, other governmental sources, the RUS borrower, or other appropriate sources may provide the supplemental funds.

(c) *What are the timeframes for supplying these funds?* Only supplemental funds that are provided to

the project after we receive your completed application may be used to meet this requirement.

(d) *When must I obtain commitments for the supplemental funds?* The funds must be committed in writing to the project before we will advance any funds to you.

§ 4280.30 What other restrictions are there on the use of loan or grant funds?

(a) You must not own or manage any ultimate recipient project, unless the project is acquired as a result of servicing a loan made from the fund.

(b) You may charge reasonable loan servicing fees, which are limited to one percent of the principal amount outstanding on the loan, reasonable professional service fees that are customary for the service being provided and in accordance with any standard fee schedules that have been established for the service, and expenses you have incurred from independent providers.

(c) Any interest earned on advances of our loan or grant funds must be returned to the Agency.

§§ 4280.31—4280.35 [Reserved]

§ 4280.36 What are some other laws that contain compliance requirements for this program?

(a) *Equal opportunity and nondiscrimination requirements.* All loans and grants made under this subpart are subject to the nondiscrimination provisions of title VI of the Civil Rights Act of 1964, (42 U.S.C. 2000(d)); section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 794); and the Age Discrimination Act of 1975, (42 U.S.C. 6101–6107).

(b) *Architectural barriers.* All facilities financed with zero-interest loans or grants that are open to the public or in which persons may be employed or reside must be designed, constructed, or altered to be readily accessible to, and usable by disabled persons. Standards for these facilities must comply with the Architectural Barriers Act of 1968, (42 U.S.C. 4151–4157) and the ''Uniform Federal Accessibility Standards'', (41 CFR part 101.19, subpart 101—19.6, Appendix A).

(c) *Uniform relocation assistance.* Relocations in connection with this program are subject to 49 CFR part 24 as referenced by 7 CFR part 21, ''Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,'' except that the provisions in title III, ''Uniform Real Property Acquisition Policy,'' of the Uniform Act do not apply to this program.

(d) *Drug-free workplace.* Grants made under this program are subject to the requirements contained in 7 CFR part 3017, subpart F, ''Drug-Free Workplace Requirements (Grants)'', which implements the Drug-Free Workplace Act of 1988 (41 U.S.C. 701–706). A borrower requesting a grant will be required to certify that it will establish and make a good faith effort to maintain a drug-free workplace program.

(e) *Debarment and suspension.* The requirements of 7 CFR part 3017, subparts A through E, regarding Governmentwide debarment and suspension (nonprocurement) are applicable to this program.

(f) *Intergovernmental review of Federal programs.* This program is subject to the requirements of Executive Order 12372, ''Intergovernmental Review of Federal Programs'' (3 CFR 1982 Comp., p. 197) and 7 CFR part 3015, subpart V, ''Intergovernmental Review of Department of Agriculture Programs and Activities,'' which implements Executive Order 12372. Proposed projects are subject to the state and local government review process contained in 7 CFR part 3015.

(g) *Restrictions on lobbying.* The restrictions and requirements imposed by 31 U.S.C. 1352, entitled ''Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions'' and the implementing regulation, 7 CFR part 3018, ''New Restrictions on Lobbying,'' are applicable to this program.

(h) *Earthquake hazards.* This program is subject to the seismic requirements of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701–7706).

(i) *Environmental requirements.* The requirements of 7 CFR part 1940, subpart G, are applicable to the program and the loans made from the revolving loan fund using our funds.

(j) *Affirmative fair housing.* If applicable, the RUS borrower will be required to comply with the Affirmative Fair Housing Act (42 U.S.C. 3601–3631)

How Do I Apply and How Much May I Request?

§ 4280.37 How do I obtain and submit an application?

(a) You may obtain forms that supplement the written narrative sections of your application from the USDA Rural Development State Office for the state where the project is located.

(b) You need to file an original only of your application with the USDA Rural Development State Office on any official working day.

§ 4280.38 What are the maximum and minimum amounts I may request for loans and grants?

During a fiscal year:

(a) The maximum amount of a single loan application is 3 percent of the available fiscal year loan funds, or $200,000, whichever is greater. This is a limit on the maximum amount of an application, not the number of applications.

(b) The maximum amount of a single grant application is 3 percent of the available fiscal year grant funds. This is a limit on the maximum amount of an application, not the number of applications.

(c) We will publish a notice of available fiscal year loan and grant funds and the maximum loan and grant amounts per application in the **Federal Register** on an annual basis.

(d) The minimum loan or grant amount to you is $20,000.

§ 4280.39 What must be included in my application for a loan or grant?

Your application for a loan and a grant must contain the following:

(a) Required forms and certifications:

(1) ''Application for Federal Assistance,'' signed by you;

(2) A board resolution certified by your board secretary. The board resolution must indicate whether you are requesting a loan or grant, agree to the provisions of this subpart and loan or grant agreement, and that you have the legal authority to enter in a loan or grant agreement under this program;

(3) ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions,'' and ''Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions'';

(4) Assurance statement for the Uniform Act signed by the ultimate recipient. This statement provides us with the required assurance statement that any relocations of persons or acquisitions of real property, as part of completing this project, will be handled in accordance with this statute;

(5) ''Certification for Contracts, Grants and Loans'' (If your loan is greater than $150,000 or your grant is greater than $100,000);

(6) ''Disclosure of Lobbying Activities,'' (If you engage in lobbying activities);

(7) ''Certification Regarding Drug-Free Workplace Requirements (Grants),'' for grants only;

(8) Seismic certification if construction of a building is proposed. The project owner certifies that any building constructed will comply with standards that reduce the damage caused by earthquakes; and

(9) ''Request for Environmental Information''.

(b) Your written narrative section of the application must consist of the following:

(1) Project description, including the work to be performed with our funds;

(2) A discussion of how the project meets each selection factor in § 4280.42(b);

(3) A Revolving Loan Fund Plan. A plan is required if you apply for a grant to establish a fund.

§ 4280.40 [Reserved]

§ 4280.41 What environmental review will be required after I submit my application?

(a) We will conduct a review of the environmental impact of the project in your application and inform you of any additional information we need and any environmental requirements for the project.

(b) We will conduct all necessary environmental reviews as prescribed in 7 CFR part 1940, subpart G. These reviews must be completed before your application can be considered for approval.

How Are Applications Selected?

§ 4280.42 How is my application evaluated and how are applications selected?

(a) We will evaluate your application and score it based on the selection factors in this section. All applications will be ranked on a nationwide basis based on the total points scored.

(b) Your application will be evaluated and scored using the information provided in accordance with § 4280.39(b)(2). Points will be awarded based on the following:

(1) *Nature of your project.* We will award points based on whether your project:

(i) Is a for-profit business start-up or expansion, business incubator, industrial building or park, or infrastructure necessary to connect only for-profit businesses to existing infrastructure—20 points;

(ii) Provides technical assistance to rural businesses or rural residents, or educates or provides medical care to rural residents—20 points;

(iii) Will enhance rural economic development by providing advanced telecommunications services and computer networks for medical, educational, and job training services. This review will be based on your application's telecommunications design—20 points.

(2) *Number of full-time jobs.*

If the number of direct full-time rural jobs either created or saved per $100,000 of total project costs is	Then we will award
(i) Greater than five	25 points;
(ii) From one to five	15 points.

(3) *Supplemental funds for your project.* Points will be based on a calculation of the amount of supplemental funds to be provided to the project. Supplemental funds must be provided on a pro rata basis to the project within a 12 month period that begins on the day our funds are provided to the project. All supplemental funds used in the following calculation must be disbursed to the project between the date of our receipt of your application and 1 year after our first advance of funds:

If supplemental funds as a percentage of the Agency loan or grant to be provided to the project are	Then we will award	If supplemental funds as a percentage of the Agency loan or grant to be provided to the project are	Then we will award	If supplemental funds as a percentage of the Agency loan or grant to be provided to the project are	Then we will award
(i) Greater than 200%	20 points;	(ii) From 100% to 200% ...	10 points;	(iii) From 50% to less than 100%.	5 points.

(4) *Unemployment rate for the county(ies) where your project is located.* We will compare the unemployment rate(s) in the county(ies) to the state and national unemployment rates, as follows:

If the unemployment rate(s) in the county(ies) where your project will be located	Then we will award	If the unemployment rate(s) in the county(ies) where your project will be located	Then we will award	If the unemployment rate(s) in the county(ies) where your project will be located	Then we will award
(i) Exceeds the national unemployment rate by 30% or more.	15 points;	(ii) Is greater than the national unemployment rate, but is less than 130% of the national unemployment rate.	5 points;	(iii) Exceeds the state unemployment rate by 30% or more.	10 points;
				(iv) Is greater than the state unemployment rate but is less than 130% of the state unemployment rate.	5 points.

(5) *Median household income for the county(ies) where your project is located.* We will compare the median household income in the county(ies) where your project will be located to the national and state median household income levels, as follows:

If the median household income level in the county(ies) is:	Then we will award
(i) Less than or equal to 90% national level.	15 points;
(ii) Between 90 and 100% of the national level.	5 points;
(iii) Less than or equal to 90% state level.	10 points;
(iv) Between 90 and 100% of the state level.	5 points.

(6) *Decline in population for the county(ies) where your project is located.* If there has been a long-term decline in population in the county(ies) where your project will be located over the time period covered by the three most recent decennial censuses of the United States to the present—10 points.

(7) *Cushion of credit payments.* We will determine the level of your cushion of credit payments, as follows:

If your cushion of credit account level is	Then we will award
(i) In excess of $300,000, or a dollar amount in excess of three percent of your total assets, whichever is less.	15 points;
(ii) Within the range of $100,000 to less than $300,000, or a dollar amount that is within the range of one percent to less than three percent of your total assets, whichever is less.	10 points;
(iii) Within the range of $10,000 to less than $100,000, or a dollar amount that is within the range of 0.5 percent to less than one percent of your total assets, whichever is less.	5 points.

(8) *Initial loan and grant.* If your loan application would be the first loan awarded to you under this program or the grant application is the first grant awarded to you under this program—10 points.

(9) *County participation.* If your project would be the first project this program financed in the county where your project is to be located—10 points.

(10) *Ultimate recipient's plan.* We will evaluate the ultimate recipient's business plan or telecommunications design that would include the following:

(i) A description of the business or project plans and, if applicable, its products and operating plans. (For applications for advanced telecommunications, the business plan we evaluate would be the application's telecommunications and engineering design)—15 points; and

(ii) An appropriate financial plan, including a feasibility study with projected balance sheets, income statements and cash flow statements for the term of the loan—20 points.

§ 4280.43 Is there a possibility for discretionary points and how are they awarded?

Yes, the Administrator, based on the State Director's recommendation, has the discretion to designate up to 25 points based on whether your project:

(a) Is located in a Rural Empowerment Zone, Rural Enterprise Community, or Champion Community;

(b) Is located in a county that has experienced the loss, removal, or closing of a major source or sources of employment in the last 3 years which causes an increase of 2 percentage points or more in the county's most recent unemployment rate compared with the period immediately before the dislocation;

(c) Is located in a county that has experienced chronic or long-term economic deterioration;

(d) Utilizes advanced telecommunications or computer networks to facilitate medical or educational services or job training;

(e) Is located in a county that was designated a disaster area by the President of the United States or Secretary of Agriculture that significantly affected rural economic development and job creation. The county must have been designated within 3 years prior to your applying to us; or

(f) Is consistent with the Rural Development State Office's approved strategic plan and mission area objectives.

§ 4280.44 Are there limits on the number of loans or grants I may receive?

Yes, depending on the amount of funds available, we may limit you to one selected grant application and two selected loan applications in a fiscal year.

§§ 4280.45–4280.46 [Reserved]

§ 4280.47 What if I am not selected?

(a) If you are not selected, you may elect to have your application reconsidered.

(b) Your application will be considered for a total of four of our selection competitions. You may reapply if the application is revised and be considered for another four selection competitions.

What Must I do After Selection?

§ 4280.48 If I am selected, what documents must I execute?

We will notify you in writing if your application is selected. The documents to be executed will include:

(a) *Loan.* (1) A Letter of Agreement with specific terms and conditions;

(2) A loan agreement with general terms and conditions;

(3) A note covering the repayment terms of the loan; and

(4) A legal opinion concerning your authority to engage in the project.

(b) *Grant.* (1) A Letter of Agreement with project specific terms and conditions;

(2) A grant agreement with general terms and conditions; and

(3) A legal opinion concerning your authority to participate in the project.

§ 4280.49 What documents must I submit for approval before I can receive my funds?

We must approve any agreements or changes in agreements between you and the ultimate recipient. We must also approve agreements involved in any multi-step financial transaction that involves lending our funds to any intermediate entities, which will subsequently lend the funds to the ultimate recipient.

§ 4280.50 How do I obtain the approved loan or grant funds?

(a) We will disburse zero-interest loan funds to you in accordance with the terms of the executed loan agreement. All loan funds will be disbursed in

advance to you at one time once you have complied with our requirements.

(b) We will disburse grant funds to you in accordance with 7 CFR parts 3015 and 3016, as applicable. Specifically, we will disburse the grant funds in advance if the following requirements are met:

(1) You have demonstrated to us the willingness and ability to establish written procedures that will minimize the time elapsing between the transfer of funds from us and their disbursement to the ultimate recipient;

(2) Your financial management system meets the requirements of 7 CFR parts 3015 and 3016, as applicable;

(3) All necessary supplemental funds for the project have been obligated or committed to the project; and

(4) Your request for cash advances from us are limited to the minimum amounts needed and timed to be in accordance with the actual, immediate cash needs of carrying out the project.

(c) You must provide to the ultimate recipient all loan funds that we have disbursed to you within 6 months of your receiving them.

§§ 4280.51–4280.52 [Reserved]

§ 4280.53 How do I make loan payments?

You must make all loan payments to us by electronic funds transfer or other means as specified in the loan documents.

§ 4280.54 Do I have to follow certain construction procurement requirements?

Yes, construction, including bidding and awarding of contracts, must be conducted in a manner that provides maximum open and free competition.

§ 4280.55 What are my responsibilities to monitor and review the project?

(a) If you receive a loan or grant, you must monitor the project to the extent necessary to ensure that:

(1) Funds are used only for approved purposes;

(2) Disbursements and expenditures of funds are properly supported with certifications, invoices, contracts, bills of sale, or other forms of evidence, which are maintained on your premises;

(3) Project time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved; and

(4) The project is in compliance with all applicable regulations.

(b) We may inspect and copy your records and documents that pertain to the project which you must retain for the term of the project loan plus 2 years. In addition, we may also perform project site visits and reviews of the use of loan or grant proceeds.

(c) We will review and monitor grants in accordance with appropriate United States Department of Agriculture regulations at 7 CFR parts 3015, 3016, 3017, 3018, and 3052.

§ 4280.56 What reports or audits must I and ultimate recipients submit?

(a) If you receive a loan or grant, you must submit the following report:

(1) *Loan.* You must submit the ''Survey of Recipients of Rural Economic Development Loan and Grant Program,'' to us on an annual basis until the project is completed.

(2) *Revolving Loan Fund (Grant).* You must submit the ''Survey of Recipients of Rural Economic Development Loan and Grant Program,'' to us on an annual basis until the projects financed with our proceeds are completed and, thereafter, on a triennial basis until the fund is terminated.

(b) If you have an outstanding loan with RUS, we will obtain a copy of your audit from RUS. If you do not have an existing loan with RUS, you will need to submit a copy of your annual audit to us. All audits must be conducted in accordance with Generally Accepted Government Auditing Standards and/or Generally Accepted Accounting Principles.

(c) We may require ultimate recipients of grant funds provided under this program to submit annual audits to comply with federal audit regulations. In accordance with 7 CFR part 3052, if an ultimate recipient spends $300,000 or more of Federal funds in one year and they are a nonprofit entity, or a State or local government, then they may be required to submit an audit.

§§ 4280.57–4280.61 [Reserved]

§ 4280.62 How may I appeal an adverse decision?

You may appeal any appealable adverse decision we make that affects you in accordance with 7 CFR part 11.

§ 4280.63 Exception authority.

The Administrator of the Agency may, in individual cases, grant an exception to any non-statutory requirement or provision of this subpart, provided the Administrator determines in writing that the application of the requirement or provision would adversely affect USDA's interest.

§§ 4280.64–4280.99 [Reserved]

§ 4280.100 OMB control number. [Reserved]

Dated: December 3, 1999.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 99–32009 Filed 12–14–99; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1744

RIN 0572–AB53

Post-Loan Policies and Procedures Common to Guaranteed and Insured Loans

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: Recent changes in the telecommunications industry, including deregulation and technological developments, have caused Rural Utilities Service (RUS) borrowers and other organizations providing telecommunications services to consider undertaking projects that provide new telecommunications services and other telecommunications services not ordinarily financed by RUS. The ability of telecommunications providers to compete in an expanding number of telecommunications services may be critical to their financial strength and stability. Although some of these services may not be eligible for financing under the Rural Electrification Act of 1936 (RE Act), these services may nevertheless advance RE Act objectives where the borrower obtains financing from private lenders. Rural subscribers will be the beneficiaries of these services and, overall, the borrowers' financial strength and the assurance of repayment of outstanding Government debt will be improved as a result of providing such telecommunications services. To facilitate the financing of those services, RUS is willing to consider accommodating the Government's lien on telecommunications borrowers' systems or subordinating the Government's lien on after-acquired property of telecommunications borrowers.

DATES: Written comments on this proposed rule must be received by RUS or carry a postmark or equivalent by February 14, 2000.

ADDRESSES: Written comments should be addressed to Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural

Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1590, Room 4056, South Building, Washington, DC 20250–1590. RUS requests a signed original and three copies of all comments (7 CFR part 1700). All comments received will be made available for public inspection at room 4056, South Building, Washington, DC, between 8 a.m. and 4 p.m. (7 CFR part 1.27(b)). Telephone number (202) 720–9554.

FOR FURTHER INFORMATION CONTACT: Jonathan P. Claffey, Deputy Assistant Administrator, Telecommunications Program, Rural Utilities Service, U.S. Depatment of Agriculture, 1400 Independence Avenue, SW., STOP 1590, Room 4056, Washington, DC 20250–1590. Telephone number (202) 720–9556.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require a consultation with State and local officials. A final rule related Notice entitled, ''Department Programs and Activities Excluded from Executive Order 12372'' (50 FR 47034) exempts RUS and Rural Telephone Bank loans and loan guarantees from coverage under this Order.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted, no retroactive effort will be given to this rule, and, in accordance with Sec. 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. Sec. 6912(e)), administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

RUS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS telecommunications program provides loans to borrowers at interest rates and on terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

This rule contains no new reporting or recordkeeping burdens under OMB control number 0572–0079 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

National Environmental Policy Act Certification

The Administrator of RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.851, Rural Telephone Loans and Loan Guarantees; and number 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Unfunded Mandates

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

Background

RUS is proposing to amend its regulations covering lien accommodations under certain circumstances where the borrower's financial strength is sufficient to protect security for the Government's loans and the lender seeking a lien accommodation.

Since the passage of the Telecommunications Act of 1996, which provides for a competitive, deregulated national telecommunications policy framework, the Federal Communications Commission (FCC) has been working to implement the provisions of the new law. As those provisions begin to be integrated through the FCC's rulemaking process, the FCC is focusing on the types of telecommunications service that must be made available to all Americans; i.e. part of universal service, and the benefits to all Americans from advanced services for schools, libraries, and rural health care providers. The newly competitive environment will undoubtedly affect the rural telecommunications marketplace. For the industry as a whole—urban and rural—competition will offer the means for delivering the universal service concept envisioned by the Telecommunications Act of 1996. In the competitive marketplace of the future, investment in infrastructure will be lucrative in markets where local exchange carriers seek to attract high-usage, low-cost subscribers. Competition will be fierce and customers will be the winners as their demands for new and improved service at affordable rates will be met. Yet in rural and high-cost areas, where quality of service and advanced service offerings are just as important, there is less potential for investment based on competition. Investment will need to be encouraged in the form of incentives through the universal support mechanisms and the lending programs of RUS, as well as private sources of financing. RUS will continue its partnership with rural America to ensure that telecommunications providers will have the means to modernize their networks; however, industry deregulation and new technological developments have caused RUS borrowers and other organizations providing telecommunications services to consider undertaking projects that provide new telecommunications services and other telecommunications services not ordinarily financed by RUS. Although some of these services may not be eligible for financing under the Rural Electrification Act of 1936 (RE Act), these services may nevertheless advance RE Act objectives where the borrower obtains financing from private lenders.

Due to the changing environment of the telecommunications industry, large or predominately non-rural local exchange carriers (LECs) are selling their more rural exchanges in order to concentrate on their more lucrative service areas. This ''sell-off'' provides an opportunity for rural LECs to expand their service territories. Typically, these acquired exchanges will need

infrastructure improvements and the rural LECs will work hard to provide state-of-the-art service. This will require increased investment. RUS loans for infrastructure building can enable rural LECs to upgrade plant and service territories that may have been neglected for years. All subscribers, urban and rural, benefit from improvements to the national network. While opportunities exist for rural LECs to expand their markets and continue the tradition of providing the best possible service available to rural residents, uncertainties regarding future revenue streams and the availability of funds from universal service support may hamper some small LECs' investment decisions. The proposed amendments to this regulation will help to facilitate funding from non-RUS sources in order to meet the growing capital needs of rural LECs. Depending on the purposes for which a lien accommodation is being sought, RUS will provide ''automatic'' approval for borrowers that meet the financial tests described in this rule. RUS believes that borrowers that are financially sound should be afforded more flexibility with regard to financial arrangements with outside lenders for the purpose of promoting rural telecommunications. The tests are designed to ensure that the financial strength of the borrower is more than sufficient to protect the government's loan security interests; hence, the lien accommodations will not adversely affect the government's financial interests.

In addition to providing for automatic lien accommodations, this amendment will remove the requirement for borrowers seeking lien accommodations to comply with competitive bid procedures under 7 CFR part 1753. Further, RUS proposes to address other concerns involved in the accommodation of the Government's lien for those borrowers that do not qualify for an automatic lien accommodation in a subsequent revision to this subpart.

List of Subjects in 7 CFR Part 1744

Accounting, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For reasons set out in the preamble, RUS proposes to amend 7 CFR chapter XVII as follows:

PART 1744—POST-LOAN POLICIES AND PROCEDURES COMMON TO GUARANTEED AND INSURED TELEPHONE LOANS

1. The authority citation for part 1744 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et. seq.*, and 6941 *et seq.*

2. Sections 1744.20 and 1744.21 are revised to read as follows:

Subpart B—Lien Accommodations and Subordination Policy

§ 1744.20 General.

(a) Recent changes in the telecommunications industry, including deregulation and technological developments, have caused Rural Utilities Service (RUS) borrowers and other organizations providing telecommunications services to consider undertaking projects that provide new telecommunications services and other telecommunications services not ordinarily financed by RUS. Although some of these services may not be eligible for financing under the Rural Electrification Act of 1936 (RE Act), these services may nevertheless advance RE Act objectives where the borrower obtains financing from private lenders. The borrower's financial strength and the assurance of repayment of outstanding Government debt may be improved as a result of providing such telecommunications services.

(b) To facilitate the financing of new services and other services not ordinarily financed by RUS, RUS is willing to consider accommodating the Government's lien on telecommunications borrowers' systems or accommodating or subordinating the Government's lien on after-acquired property of telecommunications borrowers. To expedite this process, requests for lien accommodations meeting the requirements of § 1744.30 will receive automatic approval from RUS.

(c) This subpart sets forth RUS policy with respect to all requests for lien accommodations and subordinations for loans from private lenders. For borrowers that do not qualify for automatic lien accommodations in accordance with § 1744.30, RUS will consider lien accommodations for RE Act purposes under § 1744.40 and non-Act purposes under § 1744.50.

§ 1744.21 Definitions.

The following definitions apply to this subpart:

Administrator means the Administrator of RUS and includes the Governor of the RTB.

Advance means transferring funds from RUS, RTB, or a lender guaranteed by RUS to the borrower's construction fund.

After-acquired property means property which is to be acquired by the borrower and which would be subject to the lien of the Government mortgage when acquired.

Amortization expense means the sum of the balances of the following accounts of the borrower:

Account names	No.
(1) Amortization expense	6560.2
(2) Amortization expense—tangible	6563
(3) Amortization expense—intangible	6564
(4) Amortization expense—other	6565

Note: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Asset means a future economic benefit obtained or controlled by the borrower as a result of past transactions or events.

Automatic lien accommodation means the approval, by RUS, of a request to share the Government's lien on a pari passu or pro-rata basis with a private lender in accordance with the provisions of § 1744.30.

Borrower means any organization that has an outstanding telecommunications loan made or guaranteed by RUS, or that is seeking such financing. See 7 CFR part 1735.

Construction Fund means the RUS Construction Fund Account into which all advances of loan funds are deposited pursuant to the provisions of the loan documents.

Debt Service Coverage (DSC) ratio means the ratio of the sum of the borrower's net income, depreciation and amortization expense, and interest expense, all divided by the sum of all payments of principal and interest required to be paid by the borrower during the year on all its debt from any source with a maturity greater than 1 year and capital lease obligations.

Default means any event or occurrence which, unless corrected, will with the passage of time and the giving of proper notices give rise to remedies under one or more of the loan documents.

Depreciation expense means the sum of the balances of the following accounts of the borrower:

Account names	No.
(1) Depreciation expense	6560.1
(2) Depreciation expense—telecommunications plant in service	6561
(3) Depreciation expense—property held for future telecommunications use	6562

Note: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Disbursement means a transfer of money by the borrower out of the construction fund in accordance with the provisions of the fund.

Equity percentage means the total equity or net worth of the borrower expressed as a percentage of the borrower's total assets.

FFB means the Federal Financing Bank.

Financial Requirement Statement (FRS) means RUS Form 481 (OMB—No. 0572–0023). (This RUS Form is available from RUS, Program Development and Regulatory Analysis, Washington, DC 20250–1522.)

Government mortgage means any instrument to which the Government, acting through the Administrator, is a party and which creates a lien or security interest in the borrower's property in connection with a loan made or guaranteed by RUS whether the Government is the sole mortgagee or is a co-mortgagee with a private lender.

Hardship loan means a loan made by RUS under section 305(d)(1) of the RE Act.

Interim construction means the purchase of equipment or the conduct of construction under an RUS-approved plan of interim financing. See 7 CFR part 1737.

Interest expense means the sum of the balances of the following accounts of the borrower:

Account names	No.
(1) Interest and related items	7500
(2) Interest on funded debt	7510
(3) Interest expense—capital leases	7520
(4) Amortization of debt issuance expense	7530
(5) Less Allowance for funds used during construction	7340/7300.4
(6) Other interest deductions	7540

Note: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Interim financing means funding for a project which RUS has acknowledged may be included in a loan, should said loan be approved, but for which RUS loan funds have not yet been made available.

Lien accommodation means sharing the Government's lien on a pari passu or pro-rata basis with a private lender.

Loan means any loan made or guaranteed by RUS.

Loan documents means the loan contract, note and mortgage between the borrower and RUS and any associated document pertinent to a loan.

Loan funds means the proceeds of a loan made or guaranteed by RUS.

Material and supplies means any of the items properly recordable in the following account of the borrower:

Account names	No.
(1) Material and Supplies	1220.1

Note: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Net income/Net margins means the sum of the balances of the following accounts of the borrower:

Account names	No.
(1) Local Network Services Revenues	5000 through 5069.
(2) Network Access Services Revenues	5080 through 5084.
(3) Long Distance Network Services Revenues	5100 through 5169.
(4) Miscellaneous Revenues	5200 through 5270.
(5) Nonregulated Revenues	5280.
(6) Less Uncollectible Revenues	5200 through 5302.
(7) Less Plant Specific Operations Expense	6110 through 6441.
(8) Less Plant Nonspecific Operations Expense	6510 through 6565.
(9) Less Customer Operations Expense	6610 through 6623.
(10) Less Corporate Operations Expense	6710 through 6790.
(11) Other Operating Income and Expense	7100 through 7160.
(12) Less Operating Taxes	7200 through 7250/7200.5.
(13) Nonoperating Income and Expense	7300 through 7370.
(14) Less Nonoperating Taxes	7400 through 7450/7400.5.
(15) Less Interest and Related Items	7500 through 7540.
(16) Extraordinary Items	7600 through 7640/7600.4.
(17) Jurisdictional Differences and Nonregulated Income Items	7910 through 7990.

Note: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Net plant means the sum of the balances of the following accounts of the borrower:

Account names	No.
(1) Property, Plant and Equipment	2001 through 2007.
(2) Less Depreciation and Amortization	3100 through 3600.

Note: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Notes means evidence of indebtedness secured by or to be secured by the Government mortgage.

Pari Passu means equably; ratably; without preference or precedence.

Plant means any of the items properly recordable in the following accounts of the borrower:

Account names	No.
(1) Property, Plant and Equipment	2001 through 2007.

Note: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Private lender means any lender other than the RUS or the lender of a loan guaranteed by RUS.

Private lender notes means the notes evidencing a private loan.

Private loan means any loan made by a private lender.

RE Act (Act) means the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*)

RTB means the Rural Telephone Bank.

RUS means the Rural Utilities Service, and includes its predecessor, the Rural Electrification Administration. The term also includes the RTB, unless otherwise indicated.

RUS cost-of-money loan means a loan made under section 305(d)(2) of the RE Act.

Subordination means allowing a private lender to have a lien on specific property which will have priority over the Government's lien on such property.

Tangible plant means any of the items properly recordable in the following accounts of the borrower:

Account names	No.
(1) Telecommunications Plant in Service—General Support Assets	2110 through 2124.
(2) Telecommunications Plant in Service—Central Office Assets	2210 through 2232.
(3) Telecommunications Plant in Service—Information Origination/Termination Assets	2310 through 2362.
(4) Telecommunications Plant in Service—Cable and Wire Facilities Assets	2410 through 2441.
(5) Amortizable Tangible Assets	2680 through 2682.
(6) Nonoperating Plant	2006.

Note: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Telecommunication services means any service for the transmission, emission, or reception of signals, sounds, information, images, or intelligence of any nature by optical waveguide, wire, radio, or other electromagnetic systems and shall include all facilities used in providing such service as well as the development, manufacture, sale, and distribution of such facilities.

Times interest earned ratio (TIER) means the ratio of the borrower's net income or net margins plus interest expense, divided by said interest expense.

Total assets means the sum of the balances of the following accounts of the borrower:

Account names	No.
(1) Current Assets	1100s through 1300s.
(2) Noncurrent Assets	1400s through 1500s.
(3) Total telecommunications plant	2001 through 2007.
(4) Less accumulated depreciation	3100 through 3300s.
(5) Less accumulated amortization	3400 through 3600s.

Note: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Total equity or net worth means the excess of a borrower's total assets over its total liabilities.

Total liabilities means the sum of the balances of the following accounts of the borrower:

Account names	No.
(1) Current Liabilities	4010 through 4130.2.
(2) Long-Term Debt	4210 through 4270.3.
(3) Other Liabilities and Deferred Credits	4310 through 4370.

Note: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Total long-term debt means the sum of the balances of the following accounts of the borrower:

Account names	No.
(1) Long-Term Debt	4210 through 4270.3

Note: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Weighted-average life of the loans or notes means the average life of the loans or notes based on the proportion of original loan principal paid during each year of the loans or notes. It shall be determined by calculating the sum of all loan or note principal payments expressed as a fraction of the original loan or note principal amount, times the number of years and fractions of years elapsed at the time of each payment since issuance of the loan or note. For example, given a $5 million loan, with a maturity of 5 years and equal principal payments of $1 million due on the

anniversary date of the loan, the weighted-average life would be: (.2)(1 year) + (.2)(2 years) + (.2)(3 years) + (.2)(4 years) + (.2)(5 years) = .2 years + .4 years + .6 years + .8 years + 1.0 years = 3.0 years. If instead the loan had a balloon payment of $5 million at the end of 5 years, the weighted-average life would be: ($5 million/$5 million)(5 years) = 5 years.

Weighted-average remaining life of the loans or notes means the remaining average life of the loans or notes based on the proportion of remaining loan or note principal expressed in years remaining to maturity of the loans or notes. It shall be determined by calculating the sum of the remaining principal payments of each loan or note expressed as a fraction of the total remaining loan or note amounts times the number of years and fraction of years remaining until maturity of the loan or note.

Weighted-average remaining useful life of the assets means the estimated original average life of the assets to be acquired with the proceeds of the private lender notes expressed in years based on depreciation rates less the number of years those assets have been in service (or have been depreciated). It shall be determined by calculating the sum of each asset's remaining value expressed as a fraction of the total remaining value of the assets, times the estimated number of years and fraction of years remaining until the assets are fully depreciated.

Wholly-owned subsidiary means a corporation owned 100 percent by the borrower.

3. Sections 1744.30, 1744.40, and 1744.50 are redesignated as §§ 1744.40, 1744.50, and 1744.55, respectively.

4. New section 1744.30 is added to read as follows:

§ 1744.30 Automatic lien accommodations.

(a) *Purposes and requirements for approval.* Automatic lien accommodations are available only for refinancing and refunding of notes secured by the borrower's existing Government mortgage; financing assets, to be owned by the borrower, to provide telecommunications services; or financing assets, to be owned by a wholly-owned subsidiary of the borrower, to provide telecommunications services in accordance with the procedures set forth below.

(b) *Private lender responsibility.* The private lender is responsible for ensuring that its notes, for which an automatic lien accommodation has been approved as set forth in this section are secured under the mortgage. The private lender is responsible for ensuring that the supplemental mortgage is a valid and binding instrument enforceable in accordance with its terms, and recorded and filed in accordance with applicable law. If the private lender determines that additional documents are required or that RUS must take additional actions to secure the notes under the mortgage, the private lender shall follow the procedures set forth in § 1744.40 or § 1744.50, as appropriate.

(c) *Refinancing and refunding.* The Administrator will automatically approve a borrower's execution of private lender notes and the securing of such notes on a pari passu or pro-rata basis with all other notes secured under the Government mortgage, when such private lender notes are issued for the purpose of refinancing or refunding any notes secured under the Government mortgage, provided that all of the following conditions are met:

(1) No default has occurred and is continuing under the Government mortgage;

(2) The borrower has delivered to the Administrator, at least 10 business days before the private lender notes are to be executed, a certification and agreement executed by the President of the borrower's Board of Directors, such certification and agreement to be substantially in the form set forth in Appendix A of this subpart, providing that:

(i) No default has occurred and is continuing under the Government mortgage;

(ii) The principal amount of such refinancing or refunding notes will not be greater than 105 percent of the then outstanding principal balance of the notes being refinanced or refunded;

(iii) The weighted-average life of the private loan evidenced by the private lender notes will not exceed the weighted-average remaining life of the notes being refinanced or refunded;

(iv) The private lender notes will provide for substantially level debt service or level principal amortization over a period not less than 5 years;

(v) Except as provided in the Government mortgage, the borrower has not agreed to any restrictions or limitations on future loans from RUS; and

(vi) If the private lender determines that a supplemental mortgage is necessary, the borrower will comply with those procedures set forth in paragraph (h) of this section for the preparation, execution, and delivery of a supplemental mortgage and take such additional action as may be required to secure the notes under the Government mortgage.

(d) *Financing assets to be owned directly by a borrower.* The Administrator will automatically approve a borrower's execution of private lender notes and the securing of such notes on a pari passu or pro-rata basis with all other notes secured under the Government mortgage, when such private lender notes are issued for the purpose of financing the purchase or construction of plant and material and supplies to provide telecommunication services and when such assets are to be owned and the telecommunications services are to be offered by the borrower, provided that all of the following conditions are met:

(1) The borrower has achieved a TIER of not less than 1.5 and a DSC of not less than 1.25 for each of the borrower's two fiscal years immediately preceding the issuance of the private lender notes;

(2) The ratio of the borrower's net plant to its total long-term debt at the end of any calendar month ending not more than 90 days prior to execution of the private lender notes is not less than 1.2, on a pro-forma basis, after taking into account the effect of the private lender notes on the total long-term debt of the borrower;

(3) The borrower's equity percentage, as of the most recent fiscal year-end, was not less than 25 percent;

(4) No default has occurred and is continuing under the Government mortgage;

(5) The borrower has delivered to the Administrator, at least 10 business days before the private lender notes are to be executed, a certification by an independent certified public accountant that the borrower has met each of the requirements in paragraphs (d)(1) and (d)(3) of this section, such certification to be substantially in the form in Appendix B of this subpart; and

(6) The borrower has delivered to the Administrator, at least 10 business days before the private lender notes are to be executed, a certification and agreement executed by the President of the borrower's Board of Directors, such certification and agreement to be substantially in the form in Appendix C of this subpart: provided, that:

(i) The borrower has met each of the requirements in paragraphs (d)(2) and (d)(4) of this section;

(ii) The proceeds of the private lender notes are to be used for the construction or purchase of the plant and materials and supplies to provide telecommunications services in accordance with this section and such construction or purchase is expected to be completed not later than 4 years after execution of such notes;

(iii) The weighted-average life of the private loan evidenced by the private lender notes does not exceed the weighted-average remaining useful life of the assets being financed;

(iv) The private lender notes will provide for substantially level debt service or level principal amortization over a period not less than 5 years;

(v) All of the assets financed by the private loans will be purchased or otherwise procured in bona fide arm's length transactions;

(vi) The financing agreement with the private lender will provide that the private lender shall cease the advance of funds upon receipt of written notification from RUS that the borrower is in default under the RUS loan documents;

(vii) Except as provided in the Government mortgage, the borrower has not agreed to any restrictions or limitations on future loans from RUS; and

(viii) If the private lender determines that a supplemental mortgage is necessary, the borrower will comply with those procedures set forth in paragraph (h) of this section for the preparation, execution, and delivery of a supplemental mortgage and take such additional action as may be required to secure the notes under the Government mortgage.

(e) *Financing assets to be owned by a wholly-owned subsidiary of the borrower.* The Administrator will automatically approve a borrower's execution of private lender notes and the securing of such notes on a pari passu or pro-rata basis with all other notes secured under the Government mortgage, when such private lender notes are issued for the purpose of financing the purchase or construction of tangible plant and material and supplies to provide telecommunication services and when such services are to be offered and the associated tangible assets are to be owned by a wholly-owned subsidiary of the borrower, provided that all of the following conditions are met:

(1) The borrower has achieved a TIER of not less than 2.5 and a DSC of not less than 1.5 for each of the borrower's two fiscal years immediately preceding the issuance of the private lender notes;

(2) The ratio of the borrower's net plant to its total long-term debt at the end of any calendar month ending not more than 90 days prior to execution of the private lender notes is not less than 1.6, on a pro-forma basis, after taking into account the effect of the private lender notes on the total long-term debt of the borrower;

(3) The borrower's equity percentage, as of the most recent fiscal year-end, was not less than 45 percent;

(4) No default has occurred and is continuing under the Government mortgage;

(5) The borrower has delivered to the Administrator, at least 10 business days before the private lender notes are to be executed, a certification by an independent certified public accountant that the borrower has met each of the requirements in paragraphs (e)(1) and (e)(3) of this section, such certification to be substantially in the form in Appendix D of this subpart; and

(6) The borrower has delivered to the Administrator, at least 10 business days before the private lender notes are to be executed, a certification and agreement executed by the President of the borrower's Board of Directors, such certification and agreement to be substantially in the form in Appendix E of this subpart; providing that:

(i) The borrower has met each of the requirements in paragraphs (e)(2) and (e)(4) of this section;

(ii) The proceeds of the private lender notes are to be used for the construction or purchase of the tangible plant and materials and supplies to provide telecommunications services in accordance with this section and such construction or purchase is expected to be completed not later than 4 years after execution of such notes;

(iii) The weighted-average life of the private loan evidenced by the private lender notes does not exceed the weighted-average remaining useful life of the assets being financed;

(iv) The private lender notes will provide for substantially level debt service or level principal amortization over a period of time not less than 5 years;

(v) All of the assets financed by the private loans will be purchased or otherwise procured in bona fide arm's length transactions;

(vi) The proceeds of the private lender notes will be lent to a wholly-owned subsidiary of the borrower pursuant to terms and conditions agreed upon by the borrower and subsidiary;

(vii) The borrower will, whenever requested by RUS, provide RUS with a copy of the financing or guarantee agreement between the borrower and the subsidiary or any similar or related material including security instruments, loan contracts, or notes issued by the subsidiary to the borrower;

(viii) The borrower will promptly report to the Administrator any default by the subsidiary or other actions that impair or may impair the subsidiary's ability to repay its loans;

(ix) The financing agreement with the private lender will provide that the private lender shall cease the advance of funds upon receipt of written notification from RUS that the borrower is in default under the RUS loan documents;

(x) Except as provided in the Government mortgage, the borrower has not agreed to any restrictions or limitations on future loans from RUS; and

(xi) If the private lender determines that a supplemental mortgage is necessary, the borrower will comply with those procedures set forth in paragraph (h) of this section for the preparation, execution, and delivery of a supplemental mortgage and take such additional action as may be required to secure the notes under the Government mortgage.

(f) *Borrower notification.* The borrower shall notify RUS of its intention to obtain an automatic lien accommodation under this section by providing the following:

(1) The board resolution cited in § 1744.55(b)(1) and the opinion of counsel cited in § 1744.55(b)(2);

(2) The applicable certification or certifications required by paragraph (c)(2); paragraphs (d)(5) and (d)(6); or paragraphs (e)(5) and (e)(6), respectively, of this section, in substantially the form set forth in the applicable appendices to this subpart.

(g) *RUS acknowledgment.* Within 5 business days of receipt of the completed certifications and any other information required under this section, RUS will review the information and provide written acknowledgment to the borrower of its qualification for an automatic lien accommodation. Upon receipt of the acknowledgment, the borrower may execute the private lender notes.

(h) *Supplemental mortgage.* If the private lender determines that a supplemental mortgage is required to secure the private lender notes on a pari passu or pro-rata basis with all other notes secured under the Government mortgage, the private lender may prepare the supplemental mortgage using the form attached as Appendix F to this subpart or the borrower may request RUS to prepare such supplemental mortgage in accordance with the following procedures:

(1) The private lender preparing the supplemental mortgage shall execute and forward the completed document to RUS. Upon ascertaining the correctness of the form and the information concerning RUS, RUS will execute and forward the supplemental mortgage to the borrower.

(2) When requested by the borrower, RUS will expeditiously prepare the supplemental mortgage, using the form in Appendix F to this subpart, upon submission by the private lender of:

(i) The name of the private lender;

(ii) The Property Schedule for inclusion as supplemental mortgage Schedule B, containing legally sufficient description of all real property owned by the borrower; and

(iii) The amount of the private lender note.

(3) The private lender is responsible for ensuring that the supplemental mortgage has been executed by all parties and is a valid and binding instrument enforceable in accordance with its terms, and recorded and filed in accordance with applicable law. If the private lender determines that additional security instruments or other documents are required or that RUS must take additional actions to secure the private lender notes under the mortgage, the private lender shall follow the procedures set forth in §§ 1744.40 or 1744.50, as appropriate. When processing of the supplemental mortgage has been completed to the satisfaction of the private lender, the borrower shall provide RUS with the following:

(i) A fully executed counterpart of the supplemental mortgage, including all signatures, seals, and acknowledgements; and

(ii) Copies of all opinions rendered by borrower's counsel to the private lender.

(i) *Other approvals.* (1) The borrower is responsible for meeting all requirements necessary to issue private lender notes and to accommodate the lien of the Government mortgage to secure the private lender notes including, but not limited to, those of the private lender, of any other mortgagees secured under the existing RUS mortgage, and of any governmental entities with jurisdiction over the issuance of notes or the execution and delivery of the supplemental mortgage.

(2) To the extent that the borrower's existing mortgage requires RUS approval before the borrower can make an investment in an affiliated company, approval is hereby given for all investments made in affiliated companies with the proceeds of private lender notes qualifying for an automatic lien accommodation under paragraph (e) of this section. Any reference to an approval by RUS under the mortgage shall apply only to the rights of RUS and not to any other party.

5. Revise newly redesignated § 1744.50(a)(3), to read as follows:

§ 1744.50 Non-Act purposes.

(a) * * *

(3) Approval of the request is in the interests of the Government with respect to the financial soundness of the borrower and other matters, such as assuring that the borrower's system is constructed cost-effectively using sound engineering practices.

* * * * *

6. In newly redesignated § 1744.55, revise paragraph (a), remove paragraph (b)(5), and redesignate paragraph (b)(6) as paragraph (b)(5), to read as follows:

§ 1744.55 Application procedures.

(a) Requests for information regarding applications for lien accommodations or subordination under this part should be addressed to the Assistant Administrator, Telecommunications Program, Rural Utilities Service, Washington, DC 20250–1590.

* * * * *

7. Appendices A, B, C, D, E, and F are added to subpart B to read as follows:

BILLING CODE 3410–15–P

Appendix A to Subpart B of Part 1744—Statement, Certification, and Agreement of President of Board of Directors Regarding Refinancing and Refunding Notes Pursuant to 7 CFR 1744.30(c)

I _____(Name of President)_____, am President of _____(Name of Borrower)_____ (the "borrower"). The borrower proposes to issue notes (the "private lender notes"), to be dated on or about _____ and delivered to _____(Name of Private Lender)_____ (the "private lender"). I am duly authorized to make and enter into the following statements, certifications, and agreements for the purpose of inducing the United States of America (the "government"), to give automatic approval to the issuance of the private lender notes pursuant to 7 CFR 1744.30(c).

(a) The private lender:

___ is a mortgagee under the existing mortgage securing the government's loan to the borrower (the "government mortgage"); or

___ is not a mortgagee under the government mortgage and the borrower has executed the attached form of supplemental mortgage as provided in 7 CFR 1744.30(h).

(b) I hereby certify that all other requirements of 7 CFR 1744.30(c) are met; said requirements being as follows:

(1) No default has occurred and is continuing under the government mortgage;

(2) The principal amount of such refinancing or refunding notes, which is _____ dollars, will not be greater than 105 percent of the then outstanding principal balance of the notes being refinanced or refunded; such outstanding principal balance being _____ dollars;

(3) The weighted-average life of the private loan evidenced by the private lender notes, which is _____ years, will not exceed the weighted-average remaining life of the notes being refinanced or refunded, which is _____ years;

(4) Except as provided in the government mortgage, the borrower has not agreed to any restrictions or limitations on future loans from the Rural Utilities Service (RUS); and

(5) This certificate is being delivered to RUS at least 10 business days before the private lender notes are to be executed.

(c) The borrower agrees that the private lender notes will provide for substantially level debt service or level principal amortization over a period of time not less than 5 years.

(d) All terms not defined herein shall have the meaning set forth in 7 CFR 1744, subpart B.

_____ _____

Signed Date

_____

Name

Name and Address of Borrower:

Appendix B to Subpart B of Part 1744—Certification of Independent Certified Public Accountant Regarding Notes To Be Issued Pursuant to 7 CFR 1744.30(c)

I/We, __(Name of Independent Certified Public Accountant)__, hereby certify the following with respect to the note or notes (the "private lender notes") to be issued by ___(Name of Borrower)___ ("the borrower") on or about __(Date private lender notes are to be Signed)__, evidencing a total loan principal of _____ dollars:

(a) The borrower has achieved a TIER of not less than 1.5 and a DSC of not less than 1.25 for each of the borrower's 2 fiscal years immediately preceding the issuance of the private lender notes. The TIER and DSC ratios achieved are as follows:

Year	TIER	DSC
____	____	____
____	____	____

(b) The borrower's equity percentage, as of the most recent fiscal year-end, was not less than 25 percent:

Year	Total Equity
____	_____

_____ Signed

_____ Date

Name and address of CPA Firm:

All terms not defined herein shall have the meaning set forth in 7 CFR 1744, Subpart B.

Appendix C to Subpart B of Part 1744—Statement, Certification, and Agreement of President of Board of Directors Regarding Notes to be Issued Pursuant to 7 CFR 1744.30(d)

I _____(Name of President)_____, am President of _____(Name of Borrower) (the "borrower"). The borrower proposes to issue notes (the "private lender notes"), to be dated on or about _____ and delivered to_____(Name of Private Lender)_____ (the "private lender"). I am duly authorized to make and enter into the following statements, certifications, and agreements for the purpose of inducing the United States of America (the "government"), to give automatic approval to the issuance of the private lender notes pursuant to 7 CFR 1744.30(d).

(a) The private lender:

___ is a mortgagee under the existing mortgage securing the government's loan to the borrower (the "government mortgage"); or

___ is not a mortgagee under the government mortgage and the borrower has executed the attached form of supplemental mortgage as provided in 7 CFR 1744.30(h).

(b) I have reviewed the certificate of the independent certified public accountant also being delivered to the government in connection with the private lender notes to be issued pursuant to 7 CFR 1744.30(d) and concur with the conclusions expressed therein.

(c) I hereby certify that all other requirements of 7 CFR 1744.30(d) are met as follows:

(1) The ratio of the borrower's net plant to its total long-term debt at the end of any calendar month ending not more than 90 days prior to execution of the private lender notes is ____, which is not less than 1.2, on a pro-forma basis, after taking into account the effect of the private lender notes on the total long-term debt of the borrower;

(2) No default has occurred and is continuing under the government mortgage;

(3) The weighted-average life of the private loan evidenced by the private lender notes, which is _____ years, does not exceed the weighted-average remaining useful lives of the assets being financed, which is _____ years;

(4) Except as provided in the Government mortgage, the borrower has not agreed to any restrictions or limitations on future loans from the Rural Utilities Service (RUS); and

(5) This certificate is being delivered to RUS at least 10 business days before the private lender notes are to be executed.

(d) The borrower agrees that:

(1) The proceeds of the private lender notes are to be used for the construction or purchase of the plant and materials and supplies to provide telecommunications services in accordance with 7 CFR 1744.30 and such construction or purchase is expected to be completed not later than 4 years after execution of such notes;

(2) The private lender notes will provide for substantially level debt service or level principal amortization over a period of time not less than 5 years;

(3) All of the assets financed by the private lender notes will be purchased or otherwise procured in bona fide arm's length transactions; and

(4) The financing agreement with the private lender will provide that the private lender shall cease the advance of funds upon receipt of written notification from RUS that the borrower is in default under the RUS loan documents.

(e) All terms not defined herein shall have the meaning set forth in 7 CFR 1744, Subpart B.

_____ _____

Signed Date

_____

Name

Name and Address of Borrower:

Appendix D to Subpart B of Part 1744—Certification of Independent Certified Public Accountant Regarding Notes To Be Issued Pursuant to 7 CFR 1744.30

I/We, __(Name of Independent Certified Public Accountant)__, hereby certify the following with respect to the note or notes (the "private lender notes") to be issued by ___(Name of Borrower)___ ("the borrower") on or about __(Date private lender notes are to be Signed)__, evidencing a total loan principal of _____ dollars:

(a) The borrower has achieved a TIER of not less than 2.5 and a DSC of not less than 1.5 for each of the borrower's 2 fiscal years immediately preceding the issuance of the private lender notes. The TIER and DSC ratios achieved are as follows:

Year	TIER	DSC
____	____	____
____	____	____

(b) The borrower's equity percentage, as of the most recent fiscal year-end, was not less than 45 percent.

Year	Total Equity
____	_____

_____ _____

Signed Date

Name and address of CPA Firm:

All terms not defined herein shall have the meaning set forth in 7 CFR 1744, Subpart B.

Appendix E to Subpart B of Part 1744—Statement, Certification, and Agreement of President of Board of Directors Regarding Notes To Be Issued Pursuant to 7 CFR 1744.30(e)

I _____(Name of President)_____, am President of _____(Name of Borrower)_____ (the "borrower"). The borrower proposes to issue notes (the "private lender notes"), to be dated on or about _____ and delivered to _____(Name of Private Lender)_____ (the "private lender"). I am duly authorized to make and enter into the following statements, certifications, and agreements for the purpose of inducing the United States of America (the "government"), to give automatic approval to the issuance of the private lender notes pursuant to 7 CFR 1744.30(e).

(a) The private lender:

___ is a mortgagee under the existing mortgage securing the government's loan to the borrower (the "government mortgage"); or

___ is not a mortgagee under the government mortgage and the borrower has executed the attached form of supplemental mortgage as provided in 7 CFR 1744.30(h).

(b) I have reviewed the certificate of the independent certified public accountant also being delivered to the government in connection with private lender notes to be issued pursuant to said § 1744.30(e) and concur with the conclusions expressed therein.

(c) I hereby certify that all other requirements of 7 CFR 1744.30(e) are met; said requirements being as follows:

(1) The ratio of the borrower's net plant to its total long-term debt at the end of any calendar month ending not more than 90 days prior to execution of the private lender notes is ____, which is not less than 1.6, on a pro-forma basis, after taking into account the effect of the private lender notes on the total long-term debt of the borrower;

(2) No default has occurred and is continuing under the government mortgage;

(3) The weighted-average life of the private loan evidenced by the private lender notes, which is _____ years, does not exceed the weighted-average remaining useful lives of the assets being financed, which is _____ years;

(4) Except as provided in the government mortgage, the borrower has not agreed to any restrictions or limitations on future loans from the Rural Utilities Service "RUS"; and

(5) This certificate is being delivered to RUS at least 10 business days before the private lender note or notes are to be executed.

(d) The borrower agrees that:

(1) The proceeds of the private lender notes are to be used for the construction or purchase of the tangible plant and materials and supplies to provide telecommunications services in accordance with 7 CFR 1744.30 and such construction or purchase is expected to be completed not later than 4 years after execution of such notes;

(2) The private lender notes will provide for substantially level debt service or level principal amortization over a period of time not less than 5 years;

(3) All of the assets financed by the private lender notes will be purchased or otherwise procured in bona fide arm's length transactions;

(4) The proceeds of the private lender notes will be lent to, _(Name of Subsidiary)_, a wholly-owned subsidiary of the borrower pursuant to terms and conditions agreed upon by the borrower and subsidiary;

(5) The borrower will, whenever requested by RUS, provide RUS with a copy of the financing or guarantee agreement between the borrower and the subsidiary or any similar or related material including security instruments, loan contracts, or notes issued by the subsidiary to the borrower;

(6) The borrower will promptly report to RUS any default by the subsidiary or other actions that impair or may impair the subsidiary's ability to repay its private loans; and

(7) The financing agreement with the private lender will provide that the private lender shall cease the advance of funds upon receipt of written notification from RUS that the borrower is in default under the RUS loan documents.

(e) All terms not defined herein shall have the meaning set forth in 7 CFR 1744, Subpart B.

_____	_____
Signed	Date
_____	
Name	Name and Address of Borrower:

Appendix F to Subpart B of Part 1744—Form of Supplemental Mortgage

Supplemental Mortgage and Security Agreement, dated as of _____ , (hereinafter sometimes called this "Supplemental Mortgage") is made by and among _____ (hereinafter called the "Mortgagor"), a corporation existing under the laws of the State of _____, and the UNITED STATES OF AMERICA acting by and through the Administrator of the Rural Utilities Service (hereinafter called the "Government"), _____ (Supplemental Lender*) (hereinafter called _____), a _____ existing under the laws of _____, and is intend to confer rights and benefits on both the Government and_____ and _____ in accordance with this Supplemental Mortgage and the Original Mortgage (hereinafter defined) (the Government and the Supplemental Lenders being hereinafter sometimes collectively referred to as the "Mortgagees").

Recitals

Whereas, the Mortgagor, the Government and _____ are parties to that certain Restated Mortgage (the "Original Mortgage" as identified in Schedule "A" of this Supplemental Mortgage) originally entered into between the Mortgagor, the Government acting by and through the Administrator of the Rural Utilities Service (hereinafter called "RUS"), and _____; and

Whereas, the Original Mortgage as the same may have been previously supplemented, amended or restated is hereinafter referred to as the "Existing Mortgage"; and

Whereas, the Mortgagor deems it necessary to borrow money for its corporate purposes and to issue its promissory notes and other debt obligations therefor, and to mortgage and pledge its property hereinafter described or mentioned to secure the payment of the same, and to enter into this *Supplemental Mortgage pursuant to which all secured debt of the Mortgagor hereunder shall be secured on parity, and to add _____ as a Mortgagee and secured party hereunder and under the Existing Mortgage (the Supplemental Mortgage and the Existing Mortgage, hereinafter sometimes collectively referred to the "Mortgage"); and

Whereas, all of the Mortgagor's Outstanding Notes listed in Schedule "A" hereto is secured pari passu by the Existing Mortgage for the benefit of all of the Mortgagees under the Existing Mortgage; and

Whereas, by their execution and delivery of this Supplemental Mortgage the parties hereto do hereby secure the Additional Notes listed in Schedule "A" ((hereinafter called the *Supplemental Lender Notes)) pari passu with the Outstanding Notes under the Existing Mortgage {and do hereby add _____ as a Mortgagee and a secured party under the Existing Mortgage}; and

---

* If the Existing Mortgages already defines a Supplemental Lender, then the supplemental lender in the present transaction is to be called the "Second Supplemental Lender." If the Rural Telephone Bank is a party to the original Mortgage, then "Rural Telephone Bank (hereinafter called "the Bank")" should be added here and the words "and the Bank" should be added after each reference to the Government.

Whereas, all acts necessary to make this Supplemental Mortgage a valid and binding legal instrument for the security of such notes and related obligations under the terms of the Mortgage, have been in all respects duly authorized:

Now, Therefore, This Supplemental Mortgage Witnesseth: That to secure the payment of the principal of (and premium, if any) and interest on all Notes issued hereunder according to their tenor and effect, and the performance of all provisions therein and herein contained, and in consideration of the covenants herein contained and the purchase or guarantee of Notes by the guarantors or holders thereof, the Mortgagor has mortgaged, pledged and granted a continuing security interest in, and by these presents does hereby grant, bargain, sell, alienate, remise, release, convey, assign, transfer, hypothecate, pledge, set over and confirm, pledge and grant to the Mortgagees, for the purposes hereinafter expressed, a continuing security interest in all property, rights, privileges and franchises of the Mortgagor of every kind and description, real, personal or mixed, tangible and intangible, of the kind or nature specifically mentioned herein or any other kind or nature, in accordance with the Existing Mortgage owned or hereafter acquired by the Mortgagor (by purchase, consolidation, merger, donation, construction, erection or in any other way) wherever located, including (without limitation) all and singular the following:

A. all of those fee and leasehold interests in real property set forth in Schedule "B" hereto, subject in each case to those matters set forth in such Schedule; and

B. all of those fee and leasehold interests in real property set forth in _____ the Existing Mortgage or in any restatement, amendment or supplement thereto,_____; and

C. all of the kinds, types or items of property, now owned or hereafter acquired, described as Mortgaged Property in the Existing Mortgage or in any restatement, amendment to supplement thereto as Mortgaged Property.

It is Further Agreed and Covenanted That the Original Mortgage, as previously restated, amended or supplemented, and this Supplement shall constitute one agreement and the parties hereto shall be bound by all of the terms thereof and, without limiting the foregoing.

1. All terms not defined herein shall have the meaning given in the Existing Mortgage.
2. The Supplemental Lender Notes are "notes" and "Additional Notes" under the terms of the Existing Mortgage and the Supplemental Mortgage is a supplemental mortgage under the terms of the Existing Mortgage.
3. The holders of the Supplemental Lenders Notes shall be considered as a class, so that in those instances where the Existing Mortgage providers that the holders of majority of the notes issued to other Mortgagees, voting as a class, may approve certain actions or make certain demands, so shall the holders of the Supplemental Lender Notes be considered to be a class with rights and authority equal to those of the holders of notes issued to such other Mortgagees.
4. The Maximum Debt Limit for the Existing Mortgage shall be as set forth in Schedule "A" hereto.
5. The [Second] Supplemental Lender shall immediately cease transfer of funds covered by the Supplemental Lender Notes if it receives notice that RUS has determined that the borrower's financial condition has deteriorated to a level that impairs the security or feasibility of the government's loans to the borrower.

In Witness Whereof, _____ as Mortgagor**

** Spaces are to be provided for the execution by all other parties, together with the printed name and office of the executing individual and the name of the organization represented. Each execution must be acknowledged.

Supplemental Mortgage Schedule A

Maximum Debt Limit and Other Information

1. The Maximum Debt Limit is $_____ .

2. The Original Mortgage as referred to in the first WHEREAS clause above is more particularly described as follows:_____ .

3. The Outstanding Notes referred to in the fourth WHEREAS clause above are more particularly described as follows:

4. The Additional Notes described in the fifth WHEREAS clause above are more particularly described as follows:

Supplemental Mortgage Schedule B

Property Schedule

The fee and leasehold interests in real property referred to in clause A of the granting clause are more particularly described as follows:

Dated: November 22, 1999.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 99–31367 Filed 12–14–99; 8:45 am]

BILLING CODE 3410–15–C

DEPARTMENT OF ENERGY

10 CFR Parts 960 and 963

[Docket No. RW–RM–99–963]

RIN 1901–AA72

Office of Civilian Radioactive Waste Management; General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories; Yucca Mountain Site Suitability Guidelines

AGENCY: Office of Civilian Radioactive Waste Management (OCRWM), U.S. Department of Energy (DOE).

ACTION: Proposed rule; Announcement of public hearings.

SUMMARY: On November 30, 1999, the U.S. Department of Energy (DOE) published a Supplemental Notice of Proposed Rulemaking to amend the general guidelines for evaluating the suitability of Yucca Mountain, Nevada as a site for development of a nuclear waste repository (64 FR 67054). That notice established a 75-day public comment period ending February 14, 2000, and announced that DOE would hold two public hearings on the proposal. This notice announces the dates, times and locations of these public hearings and an alternative contact person for the proposed rulemaking.

DATES: Written comments must be received by February 14, 2000. DOE will consider comments after February 14, 2000, to the extent practicable. DOE requests one copy of the written comments.

Public hearings have been scheduled for the following dates and locations:

1. January 18, 2000, from 11:00 a.m. to 2 p.m. and 6 p.m. to 10 p.m., Terrible's Lakeside Casino, 5870 South Homestead Road, Pahrump, Nevada 89048.
2. January 19, 2000, from 11:00 a.m. to 2 p.m. and 6 p.m. to 10 p.m., University of Nevada-Las Vegas, Marjorie Barrick Museum of Natural History Auditorium, 4505 Maryland Parkway, Las Vegas, Nevada 89154.

ADDRESSES: Written comments should be addressed to Dr. William J. Boyle or Dr. Jane Summerson, U.S. Department of Energy, Yucca Mountain Site Characterization Office, P.O. Box 98608, Las Vegas, Nevada 89193–8608, or provided by electronic mail to *10CFR963@notes.ymp.gov,* or by Facsimile at 1–800–967–0739.

FOR FURTHER INFORMATION CONTACT: Dr. William J. Boyle or Dr. Jane Summerson, U.S. Department of Energy, Yucca Mountain Site Characterization Office, P.O. Box 98608, Las Vegas, Nevada 89193–8608, Telephone 1–800–967–3477.

SUPPLEMENTARY INFORMATION: To schedule a time to provide oral comments during the hearings, please call Dr. Summerson at 1–800–967–3477. Persons wishing to provide oral comments who have not registered in advance may register at the hearings. Dr. Summerson is also being included as an alternative contact person for this proposed rule and can be reached at the address and phone number listed above.

Issued in Washington, D.C. on December 8, 1999.

Lake H. Barrett,

Deputy Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 99–32412 Filed 12–14–99; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL RESERVE SYSTEM

12 CFR Parts 202, 205, 213, 226, and 230

[Regulations B, E, M, Z, and DD; Docket Nos. R–1040, R–1041, R–1042, R–1043, and R–1044]

Equal Credit Opportunity; Electronic Fund Transfers; Consumer Leasing; Truth in Lending; Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comments; reopening and extension of comment period.

SUMMARY: On September 14, 1999, the Board published for public comment revised proposals that would permit electronic delivery of federally mandated disclosures under five consumer protection regulations: B (Equal Credit Opportunity), E (Electronic Fund Transfers), M (Consumer Leasing), Z (Truth in Lending), and DD (Truth in Savings). The Board is reopening and extending the comment period in order to obtain additional comments from individual consumers, primarily by conducting focus group interviews.

DATES: Comments must be received by March 3, 2000.

ADDRESSES: Comments may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Comments should refer to Docket No. R–1040 for Regulation B, Docket No. R–1041 for Regulation E, Docket No. R–1042 for Regulation M, Docket No. R–1043 for Regulation Z, and Docket No. R–1044 for Regulation DD. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room MP–500 of the Board's Martin Building, between 9:00 a.m. and 5:00 p.m., pursuant to the Board's Rules Regarding the Availability of Information, 12 CFR Part 261.

FOR FURTHER INFORMATION CONTACT: Natalie E. Taylor, Counsel, or Michael L. Hentrel, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412. Users of Telecommunications Device for the Deaf (TDD) only, contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION: On September 14, 1999, the Board published proposed amendments to permit electronic delivery of federally mandated disclosures under Regulations B (Equal Credit Opportunity), 64 FR 49688; E (Electronic Fund Transfers), 64 FR 49699; M (Consumer Leasing), 64 FR 49713; Z (Truth in Lending), 64 FR 49722; and DD (Truth in Savings), 64 FR 49740. The comment period closed on November 15, 1999. *See* the extension of comment period published October 25, 1999 (64 FR 57409.)

The Board is reopening and extending the comment period until March 3, 2000, in order to obtain views from individual consumers through focus group interviews. The Board plans to invite consumers who have conducted financial transactions using the Internet or a home-banking program, or who would consider doing so in the near future, to comment on the effectiveness of proposed model forms for obtaining consumers' agreement to the electronic delivery of disclosures. Although the comment period is being extended primarily for the purpose of conducting these focus groups, other members of the public may also submit comments during this period but they are encouraged to submit them as soon as possible. Final action on the proposals is expected in March, shortly after the close of the public comment period.

By order of the Secretary of the Board, acting pursuant to delegated authority for the Board of Governors of the Federal Reserve System, December 8, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–32303 Filed 12–14–99; 8:45 am]

BILLING CODE 6210–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Notice of Public Hearing on Proposed Regulatory Changes to Business Loan Program

AGENCY: Small Business Administration.

ACTION: Notice of public hearing.

SUMMARY: On November 8, 1999, the U.S. Small Business Administration (SBA) published a proposed rule in the **Federal Register** (64 FR 60735) that would amend the regulations governing Certified Development Companies (''CDCs'').

SBA will hold a public hearing to provide the public an opportunity to comment orally on the proposed rule. Individuals wishing to make a presentation must register as a speaker. Presentations will be limited to 10 minutes although this period may be shortened or lengthened to accommodate all individuals registering to speak. Written copies of the presentation may be submitted for the record. Members of the hearing panel may ask questions of the speaker, but speakers will not be allowed to question each other.

DATES: SBA will hold a public hearing on January 7, 2000, from 10 a.m. to 1:30 p.m.

ADDRESSES: The hearing will be held in the 8th Floor Eisenhower Conference Room of the U.S. Small Business Administration, located at 409 Third Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Technical Information: Gail H. Hepler, 202–205–7530

Speaker Registration: Sandy Johnston, 202–205–7528

If you wish to make a presentation, please submit your name and the name of your organization to Sandy Johnston by January 5, 2000.

Dated: December 9, 1999.

Jane Palsgrove Butler,

Associate Administrator for Financial Assistance.

[FR Doc. 99–32308 Filed 12–14–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–228–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 and 767 Series Airplanes Powered by General Electric Model CF6–80C2 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747 and 767 series airplanes, that currently requires revising the FAA-approved Airplane Flight Manual (AFM) to prohibit the use of certain fuels; and either replacing an existing placard with a new placard, or replacing all dribble flow fuel nozzles (DFFN) with standard fuel nozzles, which terminates the requirements for the new placard and AFM revision. This action would continue these requirements and add identical requirements applicable to airplanes on which standard fuel nozzles are not installed. This proposal is prompted by a report of an engine flameout due to use of JP–4 or Jet B fuel during certification testing on an engine with DFFN's installed. The actions specified by the proposed AD are intended to prevent such engine flameouts and consequent engine shutdown.

DATES: Comments must be received by January 31, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–228–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Dionne M. Stanley, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2250; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–228–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–228–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 9, 1998, the FAA issued AD 98–08–23, amendment 39–10472 (63 FR 18817, April 16, 1998), applicable to certain Boeing Model 747 and 767 series airplanes powered by General Electric (GE) Model CF6–80C2 series engines, to require revising the FAA-approved Airplane Flight Manual (AFM) to prohibit the use of certain fuels; and either replacing an existing placard with a new placard, or replacing all dribble flow fuel nozzles (DFFN) with standard fuel nozzles, which terminates the requirements for the new placard and AFM revision. That action was prompted by a report of an engine flameout due to use of JP–4 or Jet B fuel

during certification testing on an engine with DFFN's installed. The requirements of that AD are intended to prevent such engine flameouts and consequent engine shutdown.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, GE has designed two new DFFN's to address in-service problems with the fuel nozzle heat shield attachment. The heat shield improvement is necessary to minimize the potential for a combustor burn-through event. However, the new heat shield design does not address the design issue associated with the wide cut fuel restrictions required by AD 98–08–23. Therefore, airplanes equipped with the new DFFN's would still be subject to the unsafe condition addressed in AD 98–08–23.

However, because the part numbers of these new GE DFFN's are not specified in Boeing Alert Service Bulletin 747–11A2052, or Boeing Alert Service Bulletin 767–11A0031, both dated September 11, 1997 (which were listed in AD 98–08–23 as appropriate sources of service information), operators having airplanes with the new DFFN's installed would not be required to comply with AD 98–08–23. Therefore, a fleet-wide wide cut fuel restriction, similar to that required by AD 98–08–23, is included in the design approval of the new GE DFFN's.

The FAA has determined, however, that if an operator obtains the new GE DFFN's through a source other than the airplane or engine manufacturer, there is no way to ensure that the operator would comply with the wide cut fuel restriction for all airplanes in its fleet. Therefore, to ensure that the fuel restriction applies to all affected airplanes, the FAA finds that additional rulemaking action is required. This proposed AD follows from that determination.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–11A2052, Revision 1, dated August 5, 1999 (for Model 747 series airplanes); and Boeing Alert Service Bulletin 767–11A0031, Revision 1, dated August 12, 1999 (for Model 767 series airplanes). The alert service bulletins describe procedures for replacing the existing placard on the door of the fueling control panel with a new placard that prohibits the use of JP–4 and Jet B fuels (wide cut fuels). Additionally, the alert service bulletins describe procedures for removing any DFFN's, including the new DFFN's, and replacing them with standard fuel nozzles, which eliminates the need for the new placard.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 98–08–23 to continue to require revisions to the FAA-approved AFM to prohibit the use of wide cut fuels. This action also would continue to require either replacement of the existing placard on the door of the fueling control panel with a new placard, or replacement of all DFFN's with standard fuel nozzles (the latter option terminates the requirements for an AFM revision and a new placard). The replacements would be required to be accomplished in accordance with the applicable alert service bulletin described previously, except as discussed below.

Differences Between Alert Service Bulletins and Proposed Rule

Operators should note that, although the alert service bulletins only apply to airplanes on which DFFN's are installed, this proposed AD would apply to any airplane that does not have certain fuel nozzles installed. The FAA has determined that, because GE is continuing to design and certify new DFFN's, it is necessary to identify the part numbers of acceptable standard fuel nozzles rather than the part numbers of DFFN's to preclude the need for future rulemaking.

Explanation of Changes Made to the Requirements of AD 98–08–23

Operators should note that paragraphs (a) and (b) of AD 98–08–23 have not been restated in this proposal. Those paragraphs in AD 98–08–23 restate the requirements of AD 97–22–04, amendment 39–10175 (62 FR 55728, October 28, 1997), and require, for all airplanes with DFFN's installed, revising the FAA-approved AFM to prohibit the use of certain fuels; and either replacing an existing placard with a new placard, or replacing all DFFN with standard fuel nozzles. AD 98–08–23 required the same actions, but made those requirements applicable to all airplanes in an operator's fleet if a DFFN was installed on any airplane in that operator's fleet. The FAA finds that the original requirements of AD 97–22–04 are implicit in the requirements introduced by AD 98–08–23. Because the compliance time for the requirements of AD 98–08–23 has already passed, it is unnecessary to restate the requirements of AD 97–22–04.

The FAA also has incorporated previously approved alternative methods of compliance to AD 98–08–23. Paragraph (a) of this proposed AD references Boeing Alert Service Bulletin 747–11A2052, Revision 1, dated August 5, 1999 (for Model 747 series airplanes), or Boeing Alert Service Bulletin 767–11A0031, Revision 1, dated August 12, 1999 (for Model 767 series airplanes), as applicable, as appropriate sources of service information.

In addition, to clarify which DFFN part numbers were subject to the existing AD, paragraph (a) of this AD has been revised to specify the part numbers of DFFN's for which that paragraph is applicable.

Cost Impact

There are approximately 430 airplanes of the affected design in the worldwide fleet. The FAA estimates that 115 airplanes of U.S. registry would be affected by this proposed AD.

The AFM revision that is currently required by AD 98–08–23, and retained in this proposed AD, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $6,900, or $60 per airplane.

The placard replacement that is currently required by AD 98–08–23, and retained in this proposed AD, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $12 per airplane. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $8,280, or $72 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10472 (63 FR 18817, April 16, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 99–NM–228–AD. Supersedes AD 98–08–23, Amendment 39–10472.

Applicability: Model 747 and 767 series airplanes, powered by General Electric Model CF6–80C2 series engines, 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 (g)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine flameouts due to the use of JP–4 or Jet B fuel on certain engines with dribble flow fuel nozzles (DFFN) installed, and consequent engine shutdown, accomplish the following:

Restatement of Requirements of AD 98–08–23

Airplane Flight Manual Revision

(a) If a DFFN having General Electric part number 9331M72P33, 9331M72P34, or 9331M72P41 is installed on any airplane in a specific operator's fleet, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD; in accordance with either Boeing Alert Service Bulletin 747–11A2052, dated September 11, 1997, or Revision 1, dated August 5, 1999 (for Model 747 series airplanes); or Boeing Alert Service Bulletin 767–11A0031, dated September 11, 1997, or Revision 1, dated August 12, 1999 (for Model 767 series airplanes); as applicable.

(1) Within 14 days after May 1, 1998 (the effective date of AD 98–08–23), all airplanes in a specific operator's fleet must revise Section 1 of the Limitations Section of the FAA-approved AFM to include the following procedures. This may be accomplished by inserting a copy of this AD into the AFM.

(i) Revise paragraph 1 of the Engine Fuel System section to read as follows: ''The fuel designation is General Electric (GE) Specification D50TF2, as revised. Fuel conforming to commercial jet fuel specification ASTM–D–1655, Jet A, and Jet A–1 are authorized for unlimited use in this engine. Fuels conforming to MIL–T–5624 grade JP–5 and MIL–T–83113 grade JP–8 are acceptable alternatives. The engine will operate satisfactorily with any of the foregoing fuels or any mixture thereof.'' And,

(ii) Add the following sentence to paragraph 2 of the Engine Fuel System section: ''The use of Jet B and JP–4 fuel is prohibited.''

Modification

(2) Within 30 days after May 1, 1998, all airplanes in a specific operator's fleet must accomplish the requirements of paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable.

(i) Remove the existing placard on the door of the fueling control panel and replace it with a new placard that restricts the use of JP–4 and Jet B fuels (wide cut fuels), in accordance with the applicable alert service bulletin. Or

(ii) Remove the DFFN's, and replace them with standard fuel nozzles, in accordance with the applicable alert service bulletin. When an operator's entire fleet has had all DFFN's replaced with standard fuel nozzles, the AFM revision required by paragraphs (a)(1)(i) and (a)(1)(ii) of this AD may be removed from the AFM, and the placard required by paragraph (a)(2)(i) of this AD may be removed from each airplane.

Spares

(b) As of May 1, 1998, no person shall install any DFFN having General Electric part number 9331M72P33, 9331M72P34, or 9331M72P41 on any airplane unless the requirements specified by paragraphs (a)(1)(i), (a)(1)(ii), and (a)(2)(i) of this AD have been accomplished for the operator's entire fleet.

New Requirements of This AD

Airplane Flight Manual Revision

(c) If a fuel nozzle NOT having one of the General Electric part numbers listed in Table 1 of this AD is installed on any airplane in a specific operator's fleet: Within 14 days after the effective date of this AD, revise Section 1 of the Limitations Section of the FAA-approved AFM for each airplane in the operator's fleet to include the following procedures. This may be accomplished by inserting a copy of this AD into the AFM.

TABLE 1.—GENERAL ELECTRIC FUEL NOZZLES ACCEPTABLE FOR INSTALLATION

Part Number
9331M72P14
9331M72P20
9331M72P21
9331M72P23
9331M72P24
9331M72P27
9331M72P28
9331M72P39
9331M72P40
1968M49P03
1968M49P04
1968M49P05
1968M49P06

(1) Revise paragraph 1 of the Engine Fuel System section to read as follows: ''The fuel designation is General Electric (GE) Specification D50TF2, as revised. Fuel conforming to commercial jet fuel specification ASTM–D–1655, Jet A, and Jet A–1 are authorized for unlimited use in this engine. Fuels conforming to MIL–T–5624 grade JP–5 and MIL–T–83113 grade JP–8 are acceptable alternatives. The engine will operate satisfactorily with any of the foregoing fuels or any mixture thereof.'' And,

(2) Add the following sentence to paragraph 2 of the Engine Fuel System section: ''The use of Jet B and JP–4 fuel is prohibited.''

Modification

(d) If a fuel nozzle not having one of the General Electric part numbers listed in Table 1 of this AD is installed on any airplane in a specific operator's fleet: Within 30 days after the effective date of this AD, accomplish the requirements of paragraph (d)(1) or (d)(2) of this AD on each airplane in the operator's fleet, in accordance with either Boeing Alert Service Bulletin 747–11A2052, Revision 1, dated August 5, 1999 (for Model 747 series airplanes); or Boeing Alert Service Bulletin 767–11A0031, Revision 1, dated August 12, 1999 (for Model 767 series airplanes); as applicable.

(1) Remove the existing placard on the door of the fueling control panel and replace it with a new placard that restricts the use of JP–4 and Jet B fuels (wide cut fuels), in accordance with the applicable alert service bulletin. Or

(2) Remove any fuel nozzle having a part number not listed in Table 1 of this AD, and replace it with a fuel nozzle having a part number listed in Table 1 of this AD, in accordance with the applicable alert service bulletin. When an operator's entire fleet has only fuel nozzles having a part number listed in Table 1 of this AD installed, the AFM revision required by paragraph (c) of this AD may be removed from the AFM, and the placard required by paragraph (d)(1) of this AD may be removed from each airplane.

(e) Except as provided by paragraphs (b) and (f) of this AD, if all fuel nozzles installed on any airplane in a specific operator's fleet have one of the General Electric part numbers listed in Table 1 of this AD, no further action is required by this AD.

Spares

(f) As of the effective date of this AD, no person shall install any fuel nozzle NOT having one of the General Electric part numbers listed in Table 1 of this AD on any airplane unless the requirements specified by paragraphs (c)(1), (c)(2), and (d)(1) of this AD have been accomplished for the operator's entire fleet.

Alternative Methods of Compliance

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

(g)(2) Alternative methods of compliance, approved previously in accordance with AD 98–08–23, amendment 39–10472, are approved as alternative methods of compliance with this AD.

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

Special Flight Permits

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

Issued in Renton, Washington, on December 9, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–32510 Filed 12–14–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–347–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAe 146 and Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace Model BAe 146 and Avro 146–RJ series airplanes. This proposal would require a one-time inspection to detect cracking or corrosion of the forward attachment bolts of the engine pylon to wing interface, and corrective action, if necessary. It would also require re-installation with re-protected and sealed bolts torqued to a lower level. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct corrosion or cracking of the forward attachment bolts of the engine pylon to wing interface, which could result in reduced structural integrity of the engine pylon attachment.

DATES: Comments must be received by January 14, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–347–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–347–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–347–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all British Aerospace Model BAe 146 and Avro 146–RJ series airplanes. The CAA advises that in-service airplanes have suffered a total of eight failures of engine pylon to wing forward attachment bolts, due to corrosion in the bolt head undercut. This condition, if not corrected, could result in reduced structural integrity of the engine pylon attachment.

Explanation of Relevant Service Information

British Aerospace has issued Service Bulletin SB.54–10, dated September 16,

1999, which describes procedures for a one-time dye penetrant or magnetic particle inspection to detect cracking, and a one-time detailed visual inspection to detect corrosion, of the forward attachment bolts of the engine pylon to wing interface. If any cracking is found, the bolts are to be replaced with new parts. If any corrosion is found, the bolts are to be cleaned or replaced with new parts, depending on the location and severity of the corrosion. The service bulletin also details re-installation with re-protected and sealed bolts torqued to a lower level. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 006–09–99 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 35 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 20 work hours (including removal and reinstallation of the engines) per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $42,000, or $1,200 per airplane.

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

Regulatory Impact

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

British Aerospace Regional Aircraft (Formerly British Aerospace Regional Aircraft Limited, Avro International Aerospace Division; British Aerospace, PLC; British Aerospace Commercial Aircraft Limited): Docket 99–NM–347–AD.

Applicability: All Model BAe 146 and Avro 146–RJ 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 detect and correct cracking or corrosion of the forward attachment bolts of the engine pylon to wing interface, which could result in reduced structural integrity of the engine pylon attachment, accomplish the following:

Inspection and Corrective Action

(a) Within 4 years since date of manufacture, or within 2,000 flight cycles after the effective date of this AD, whichever occurs later: Perform applicable inspections (dye penetrant, magnetic particle, and detailed visual) to detect discrepancies (including damage, cracking, and corrosion) of the forward attachment bolts of the engine pylon to wing interface on each engine, in accordance with British Aerospace Service Bulletin SB.54–10, dated September 16, 1999. If any discrepancy is detected, prior to further flight, perform applicable corrective actions in accordance with the service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators

shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 4: The subject of this AD is addressed in British airworthiness directive 006–09–99.

Issued in Renton, Washington, on December 9, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–32511 Filed 12–14–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 280

[Docket No. 980623159–9316–03]

RIN 0693–AB47

Procedures for Implementation of the Fastener Quality Act

AGENCY: National Institute of Standards and Technology and the Bureau of Export Administration and the Patent and Trademark Office, United States Department of Commerce.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Director of the National Institute of Standards and Technology (NIST), United States Department of Commerce, and the Under Secretary of the Bureau of Export Administration, United States Department of Commerce, and the Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, United States Department of Commerce, request comments on proposed changes to the regulations pertaining to the implementation of the Fastener Quality Act (''the FQA'') to incorporate amendments to the FQA contained in the Fastener Quality Act Amendments of 1999 (''the Act''). The proposed changes include the elimination of testing and paperwork requirements and of NIST's role in evaluating and approving bodies that accredit laboratories and registrars. The proposed changes also set forth procedures under which NIST will accept petitions for approval of certain documents and self-declarations for accreditation bodies.

The proposed changes amend the enforcement provisions of the regulations to eliminate violations that are not violations of the FQA, as amended and adding violations imposed by the Act. In addition, the proposed changes amend the recordal of insignia provisions of the regulations to remove all references to private label distributors and to provide that fasteners whose insignia must be recorded are those fasteners that are required by the applicable consensus standards to bear ''an insignia'' rather than a ''raised or depressed insignia,'' and that these fasteners are not subject to the recordal requirements if the specifications provide otherwise.

DATES: Comments must be received no later than January 14, 2000.

ADDRESSES: Comments on the proposed revisions must be submitted to: Dr. Subhas Malghan, Director's Office, Technology Services, National Institute of Standards and Technology, Mail Stop 2000, Gaithersburg, MD 20899–2000, telephone number (301) 975–4510.

FOR FURTHER INFORMATION CONTACT: Dr. Subhas Malghan, Director's Office, Technology Services, National Institute of Standards and Technology, Mail Stop 2000, Gaithersburg, MD 20899–2000, telephone number (301) 975–4510.

SUPPLEMENTARY INFORMATION:

Background

The Fastener Quality Act (FQA) was originally enacted in 1990 to protect the public safety by: (1) Requiring that certain fasteners which are sold in commerce conform to the specifications to which they are represented to be manufactured, (2) Providing for accreditation of laboratories engaged in fastener testing; and (3) Requiring inspection, testing and certification, in accordance with standardized methods, of fasteners covered by the Act. Since its enactment, the FQA has been amended three times (Pub. L. 104–113, Pub. L. 105–234, and Pub. L. 106–34). The Department of Commerce published final implementing regulations for the original FQA on September 26, 1996 and for the FQA as amended by Pub. L. 104–113 on September 8, 1998.

On June 8, 1999, the Fastener Quality Act Amendments of 1999 (the Act) (Pub. L. 106–34, 113 Stat. 118) were enacted ''to amend the Fastener Quality Act to strengthen the protection against the sale of mismarked, misrepresented, and counterfeit fasteners and eliminate unnecessary requirements, and for other purposes.'' The Act made significant changes to the FQA. Under the Act, the Secretary retains his enforcement functions and the responsibility for establishing and maintaining an insignia recordation program, and the National Institute of Standards and Technology (NIST) must continue its fastener laboratory accreditation program established under the National Voluntary Laboratory Accreditation Program (15 CFR part 285). In addition, the Act creates new responsibilities for NIST, including: Acting upon petitions requesting approval of documents setting forth guidance/requirements for certification of manufacturing systems as fastener quality assurance systems by accredited third parties; acting upon petitions requesting approval of documents setting forth guidance/requirements for accreditation of laboratories; and acting upon petitions requesting approval of documents setting forth guidance/requirements for approval of accreditation bodies to accredit laboratories. NIST also must accept affirmations, in the form of self-declarations that the accreditation bodies meet the requirements of the applicable Guide, from accreditation bodies accrediting third parties who certify manufacturing systems as fastener quality assurance systems and from accreditation bodies accrediting laboratories.

The Act eliminates many of the responsibilities delegated by the Secretary of Commerce to NIST under the FQA, including: Establishing procedures for private entities (domestic and foreign) to accredit laboratories; establishing conditions for recognizing foreign laboratories accredited by their governments or organizations; establishing the size, selection, and integrity of samples of fasteners to be inspected if not provided in the standards and specifications to which the fasteners are manufactured; establishing a required form for written inspection and testing reports; establishing what entities must retain custody of laboratory testing reports and certificates of conformance and for what period of time.

Part 1: Summary of Proposed Amendments Regarding Testing and Certification of Fasteners, Laboratory Accreditation, and Sale of Fasteners

The Fastener Quality Act Amendments of 1999 (''the Act'') repealed 15 U.S.C. 5404 through 5406. Therefore, the Department proposes the repeal of the regulations implementing those sections, found at 15 CFR part 280

§ 280.3 through 280.16, subparts B through F and subparts I through L.

Section 10(a) through 10(d) of the Act, 15 U.S.C. 5411a(a)–(d), establish an option for persons publishing documents related to certification and accreditation under the Act. Such persons may petition the Director for approval of such a document based upon a finding by the Director that the document provides equal or greater rigor and reliability as compared to the applicable ISO/IEC Guide. The Department proposes to amend the regulations by adding a new § 280.101 to establish procedures for submitting such petitions.

Section 10(e) of the Act, 15 U.S.C. 5411a(e), requires accreditation bodies accrediting third parties who certify manufacturing systems as fastener quality assurance systems and accreditation bodies accrediting laboratories to affirm to the Director that they meet the requirements of the applicable ISO/IEC Guide or another document approved by the Director pursuant to the petition procedure described above. The Department proposes to amend the regulations by adding a new § 280.102 to establish procedures for submitting such affirmations.

The Department proposes amending the regulations to add a new § 280.103 to address Section 10(d) of the Act, 15 U.S.C. 5411a(d), which establishes that for purposes of the Act, laboratories may be accredited either under a voluntary laboratory accreditation program established by private sector person or under the National Voluntary Laboratory Accreditation Program.

Part 2: Summary of Proposed Amendments to Redesignated Subpart C: Enforcement

The Secretary of Commerce, acting through the Under Secretary for Export Administration, proposes to revise subpart G, Enforcement, of the existing regulations by redesignating it as subpart C and making certain additions and deletions in order to comply with the amendments to the Act. Section 280.602(b) through (o) of the existing regulations are proposed to be deleted. In addition, knowing representation or falsification in connection with the sale of fasteners (prohibited by section 4 of the Act) and sale of fasteners without manufacturers' insignia (prohibited by section 5 of the Act) are proposed to be added as violations.

Part 3: Summary of Proposed Amendments to Redesignated Subpart D: Recordal of Insignia

The Department proposes to revise newly redesignated § 280.300 to remove all references to private label distributors of fasteners. The requirements of section 5 of the Act as amended (15 U.S.C. 5407) pertain only to manufacturers of fasteners, not to private label distributors of fasteners.

The Department proposes to further revise newly redesignated § 280.300 to provide that fasteners whose insignia must be recorded are those fasteners that are required by the applicable consensus standards to bear ''an insignia'' rather than a ''raised or depressed insignia,'' and that these fasteners are not subject to the recordal requirements if the specifications provide otherwise. Section 5 of the Act as amended (15 U.S.C. 5407) provides that fasteners subject to the recordal requirement are fasteners that are required by the applicable consensus standards to bear ''an insignia,'' not a ''raised or depressed insignia.'' Section 5 exempts fasteners from the recordal requirements where the specifications provide that insignias are not required.

The Department proposes to further revise newly redesignated § 280.300 to provide that fasteners whose insignia must be recorded are those fasteners that are required to bear an insignia by ''the applicable consensus standards,'' rather than by ''the standards and specifications by which it is manufactured.'' Section 5 of the Act as amended (15 U.S.C. 5407) provides that a recordal requirement applies where the applicable consensus standards require the placement of an insignia.

The Department proposes to further revise newly redesignated § 280.300 to remove references to purposes of the Act that were stated in the previous version of the Act but that are no longer stated in the Act.

The Department proposes to amend newly redesignated § 280.310 by revising § 280.310(a) to remove the reference to private label distributors. The requirements of section 5 of the Act as amended (15 U.S.C. 5407) pertain only to manufacturers of fasteners, not to private label distributors of fasteners.

The Department proposes to further amend newly redesignated § 280.310 by revising § 280.310(b) to replace references to ''applicants'' with references to ''manufacturers'' or to ''applicants for recordal.'' This clarifies that ''applicants'' are applicants for recordal, and that these applicants are manufacturers of fasteners.

The Department proposes to further amend newly redesignated § 280.310 by revising § 280.310(b)(4)(ii) to require ''a copy of the drawing that was included in the application for trademark registration'' rather than ''a copy of the drawing page of the application.'' The U.S. Patent and Trademark Office has issued a proposed rule (64 FR 25223 (1999)) (to be codified at 37 CFR 2.52) that removes the requirement that a mark in an application for trademark registration be depicted on a separate drawing page.

The Department proposes to further amend newly redesignated § 280.310 by adding a new § 280.310(b)(6), stating that the written application for recordal of an insignia must include a statement that the applicant is a ''manufacturer'' as that term is defined in section 3 of the Act as amended (15 U.S.C. 5402(11)). The requirements of section 5 of the Act as amended (15 U.S.C. 5407) pertain to manufacturers.

The Department proposes to further amend newly redesignated § 280.310 by revising § 280.310(c) to state that a manufacturer may designate ''only one trademark for recordal on the Fastener Insignia Registry in a single application'' rather than ''only one registered trademark for recordal on the Fastener Insignia Registry in a single application.'' This clarifies that the requirement that an application for recordal identify only one trademark pertains both to registered trademarks and to trademarks that are the subject of pending applications for registration.

The Department proposes to further amend newly redesignated § 280.310(c) to remove a reference to ''abandoned'' trademark registrations. This clarifies that a trademark registration may expire or be canceled but may not be abandoned.

The Department proposes to amend newly redesignated § 280.311 to replace ''the applicant'' with ''the applicant for recordal.'' This clarifies who ''the applicant'' refers to.

The Department proposes to amend newly redesignated § 280.312 by revising § 280.312(a) to replace the reference to the ''applicant'' with a reference to the ''manufacturer.'' The requirements of section 5 of the Act as amended (15 U.S.C. 5407) pertain only to manufacturers.

The Department proposes to amend newly redesignated § 280.312 by adding a new § 280.312(b), stating that certificates issued prior to the enactment of the Act as amended will remain in active status in accordance with the provisions of newly redesignated § 280.320, and may be maintained in accordance with the

provisions of newly redesignated § 280.320, but only if the certificate is held by a manufacturer who is required to comply with the recordation requirements of the Act as amended, and only if the fasteners associated with the certificate are fasteners that must bear an insignia pursuant to § 5 of the Act as amended (15 U.S.C. 5407).

The Department proposes to amend newly redesignated § 280.313 by revising § 280.313(a) to remove the reference to private label distributors. The requirements of section 5 of the Act as amended (15 U.S.C. 5407) pertain only to manufacturers of fasteners, not to private label distributors of fasteners.

The Department proposes to further amend newly redesignated § 280.313(a) to change ''upon recordal, either the alphanumeric designation or the registered mark, or both, may be used as recorded insignias'' to ''upon recordal, either the alphanumeric designation or the trademark, or both, may be used as recorded insignias'' to clarify that a manufacturer may use a trademark as an insignia even if that trademark has not yet been registered, provided the manufacturer has filed an application to register the insignia.

The Department proposes to further amend newly redesignated § 280.313 by revising § 280.313(b) to remove the reference to private label distributors. The requirements of section 5 of the Act as amended (15 U.S.C. 5407) pertain only to manufacturers of fasteners, not to private label distributors of fasteners.

The Department proposes to amend newly redesignated § 280.320 by revising § 280.320(a) to change ''certificates of recordal remain in an active status for five years and may be maintained in an active status for five-year periods'' to ''certificates of recordal remain in an active status for five years and may be maintained in an active status for subsequent five-year periods.'' This clarifies that the second and subsequent five-year periods commence upon the end of the previous five-year period.

The Department proposes to further amend newly redesignated § 280.320 by revising § 280.320(b) to remove the reference to private label distributors. The requirements of section 5 of the Act as amended (15 U.S.C. 5407) pertain only to manufacturers of fasteners, not to private label distributors of fasteners.

The Department proposes to further amend newly redesignated § 280.320 by revising § 280.320(c) to replace references to ''applicants'' with references to ''manufacturers'' or to ''applicants for recordal.'' This clarifies that ''applicants'' are applicants for recordal, and that all applicants are manufacturers of fasteners.

The Department proposes to further amend newly redesignated § 280.320(c) by adding a new § 280.320(c)(6), stating that the written application for maintenance of a certificate of recordal must include a statement that the applicant is a ''manufacturer'' as that term is defined in section 3 of the Act as amended (15 U.S.C. 5402(11)).

The Department proposes to amend newly redesignated § 280.321 to change ''the applicant or the holder of a certificate shall notify the Commissioner of any change of address'' to ''the applicant for recordal or the holder of a certificate must notify the Commissioner of any change of address.'' This clarifies that ''applicant'' refers to an applicant for recordal, and that notification regarding changes of address is not discretionary.

The Department proposes to amend newly redesignated § 280.323 by adding a new § 280.323(f), stating that an alphanumeric designation that has been reactivated after it has been transferred or assigned will remain in active status until the expiration of the five-year period that began upon the issuance of the designation to its original owner. This codifies existing practice.

The Department proposes to amend newly redesignated § 280.324 by revising § 280.324(b) to replace ''certificates of recordal designated inactive due to cancellation, expiration, abandonment or amendment of the trademark application or registration cannot be reactivated'' to ''certificates of recordal designated inactive due to cancellation, expiration, or amendment of the trademark registration, or abandonment or amendment of the trademark application, cannot be reactivated.'' This clarifies that trademark registrations may be canceled, or may expire or may be amended, and that applications for trademark registration may be abandoned or amended.

The Department proposes to amend newly redesignated § 280.325 to remove the reference to private label distributors. The requirements of section 5 of the Act as amended (15 U.S.C. 5407) pertain only to manufacturers of fasteners, not to private label distributors of fasteners.

Request for Public Comment

Persons interested in commenting on the proposed regulations should submit their comments in writing to the above address. All comments received in response to this notice will become part of the public record and will be available for inspection and copying at the Department of Commerce Central Reference and Records Inspection facility, room 6228, Hoover Building, Washington, DC 20230.

Additional Information

Executive Order 12866

This rule has been determined not to be significant under section 3(f) of Executive Order 12866.

Executive Order 12612

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Regulatory Flexibility Act

A Regulatory Impact Review / Final Regulatory Flexibility Analysis was prepared to accompany issuance of the September 26, 1996 final rule. That analysis projected annual cost to industry from implementing the FQA of $18.9 million. This amount was based on NIST's estimate that 25% of fasteners then produced would be covered under the Act. Assuming that 55% of then produced fasteners would be covered under the Act, as was assumed by Cost Effectiveness Committee of the Fastener Advisory Committee, the estimated annual costs of the FQA would have been approximately $38.7 million. Industry, generally, believed the cost of implementation would be far greater than either of those two figures. The great majority of costs associated with the FQA resulted from recordkeeping, inspection, testing and certification requirements imposed on fastener manufacturers that were beyond those required by consensus standards.

By its amendments to the original FQA, Pub. L. 106–34 reduced appreciably the costs associated with implementation of the FQA. First, fasteners projected to be covered by the law account for approximately 5% of total fastener production. This percentage is significantly less than NIST's original projection of 25%, and industry's much larger projection, at the time of 1996 final rule. Second, the requirements for recordkeeping, testing, certification, and inspection of fasteners beyond those contained in the consensus standard to which covered fasteners are manufactured have been eliminated. Thus, the costs associated with those requirements, will not be incurred.

One change was made by Pub. L. 106–34 that may have a small negative impact on small entities. Specifically, the law removed all references to PTO's recordation of insignias of private label

distributors of fasteners, thus providing for recordation of only manufacturers insignias. This amendment should have a negligible impact as fasteners subject to the FQA sold by private label distributors represent a very small percentage of the limited universe of fasteners subject to the Act. Specifically, NIST projects that less than 15% of the approximately 5% of all fasteners that are subject to the Act, are sold by private label distributors. These changes had the effect of limiting significantly those fasteners to which the law applies.

Paperwork Reduction Act

Notwithstanding any other provision of the law, no person is required to, nor shall any person be subject to penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

This proposed rule contains collection of information requirements subject to the Paperwork Reduction Act and has been sent to OMB for approval under the Act. Public reporting for these collections of information are estimated to average 1.5 hours per response for affirmations, 20 hours per response for petitions, and .17 hours per response for the PTO recordal, renewal forms. The estimated response time shown includes the time for reviewing instructions, gathering information, and completing and reviewing the collections of information.

Comments are invited on (a) Whether the collection of information is necessary for the functions of the agencies, including whether the information has practical utility; (b) The accuracy of the agencies' estimates of the burdens of the collections of information; (c) Ways to enhance the quality, utility and clarity of the information to be collected; and (d) Ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Send comments regarding these or any other aspect of the collection of information to:

For affirmations and petitions: Deputy Director, Technology Services, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 2000, Gaithersburg, Maryland 20899–2000, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

For PTO recordal/renewal forms: Ari Leifman, Staff Attorney, Office of the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

National Environmental Policy Act

This rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environmental Policy Act of 1969.

List of Subjects in 15 CFR Part 280

Business and industry, Fastener industry, Imports.

Dated: December 7, 1999.

Karen H. Brown,

Deputy Director, National Institute of Standards and Technology.

William Reinsch,

Under Secretary, Bureau of Export Administration.

Dated: December 7, 1999.

Q. Todd Dickinson,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

For reasons set forth in the preamble, it is proposed that Title 15 of the Code of Federal Regulations be amended as follows:

PART 280—FASTENER QUALITY

1. The authority citation for part 280 is revised to read as follows:

Authority: 15 U.S.C. 5401 et seq. (Pub. L. 101–592, as amended by Pub. L. 104–113, Pub. L. 105–234, and Pub. L. 106–34.)

2. Section 280.1 is revised to read as follows:

§ 280.1 Description of rule/Delegation of authority.

(a) *Description of rule.* The Fastener Quality Act Amendments of 1999 (the Act) (15 U.S.C. 5401 et seq., as amended by Pub. L. 104–113, Pub. L. 105–234, and Pub. L. 106–34):

(1) Protects against the sale of mismarked, misrepresented, and counterfeit fasteners; and

(2) Eliminates unnecessary requirements.

(b) *Delegations of authority.* The Director, National Institute of Standards and Technology has authority to promulgate regulations in this part regarding certification and accreditation. The Secretary of Commerce has delegated concurrent authority to amend the regulations regarding enforcement of the Act, as contained in subpart C of this part, to the Under Secretary for Export Administration. The Secretary of Commerce has also delegated concurrent authority to amend the regulations regarding recordal of insignia, as contained in subpart D of this part, to the Assistant Secretary and Commissioner of Patents and Trademarks.

§ 280.2 [Removed and § 280.601 Redesignated as § 280.2]

3. Section 280.2 is removed, and § 280.601 is redesignated as § 280.2 and amended by revising the introductory text and adding the following definitions in alphabetical order to read as follows:

§ 280.2 Definitions.

In addition to the definitions provided in 15 U.S.C. 5402, the following definitions are applicable to this part:

Abandonment of the Application means that the application for registration of a trademark on the Principal Register is no longer pending at the United States Patent and Trademark Office.

* * * * *

Commissioner means the Commissioner of Patents and Trademarks.

* * * * *

Fastener Insignia Register means the register of recorded fastener insignias maintained by the Commissioner.

* * * * *

Principal Register means the register of trademarks established under 15 U.S.C. 1051.

* * * * *

§ 280.3–280.16; Subparts C–F and I–L [Removed]

4. Sections 280.3 through 280.16 and Subparts C through F and I through L are removed, and Subpart B is revised to read as follows:

Subpart B—Petitions, Affirmations, and Laboratory Accreditation

Sec.
280.100 General.
280.101 Petitions for Approval of Documents.
280.102 Affirmations of Meeting Requirements of ISO/IEC Guides or Approved Documents.
280.103 Laboratory Accreditation.

Subpart B—Petitions, Affirmations, and Laboratory Accreditation

§ 280.100 General.

(a) *Definitions.* For purposes of this subpart, the term ''revisions'' includes changes made to existing ISO/IEC Guides or other documents, and

redesignations of those Guides or documents.

(b) *Delegation of authority.* The Director, National Institute of Standards and Technology has delegated authority to the Deputy Director, Technology Services, National Institute of Standards and Technology, to carry out the responsibilities of the Director contained in this subpart.

§ 280.101 Petitions for Approval of Documents.

(a) *Certification.* (1) A person publishing a document setting forth guidance or requirements for the certification of manufacturing systems as fastener quality assurance systems by an accredited third party may petition the Director to approve such document for use as described in section 3(7)(B)(iii)(I) of the Act (15 U.S.C. 5402(7)(B)(iii)(I)).

(2) Petitions should be submitted to: Deputy Director, Technology Services, NIST, Mail Stop 2000, 100 Bureau Drive, Gaithersburg, MD 20899–2000.

(3) The Director shall approve such petition if the document provides equal or greater rigor and reliability as compared to ISO/IEC Guide 62, including revisions from time to time. A petition shall contain sufficient information to allow the Director to make this determination. Revisions include revisions, redesignations.

(b) *Accreditation.* (1) A person publishing a document setting forth guidance or requirements for the approval of accreditation bodies to accredit third parties described in paragraph (a) of this section may petition the Director to approve such document for use as described in section 3(7)(B)(iii)(I) of the Act (15 U.S.C. 5402(7)(B)(iii)(I)).

(2) Petitions should be submitted to: Deputy Director, Technology Services, NIST, Mail Stop 2000, 100 Bureau Drive, Gaithersburg, MD 20899–2000.

(3) The Director shall approve such petition if the document provides equal or greater rigor and reliability as compared to ISO/IEC Guide 61, including revisions from time to time. A petition shall contain sufficient information to allow the Director to make this determination.

(c) *Laboratory Accreditation.* (1) A person publishing a document setting forth guidance or requirements for the accreditation of laboratories may petition the Director to approve such document for use as described in section 3(1)(A) of the Act (15 U.S.C. 5402(1)(A)).

(2) Petitions should be submitted to: Deputy Director, Technology Services, NIST, Mail Stop 2000, 100 Bureau Drive, Gaithersburg, MD 20899–2000.

(3) The Director shall approve such petition if the document provides equal or greater rigor and reliability as compared to ISO/IEC Guide 25, including revisions from time to time. A petition shall contain sufficient information to allow the Director to make this determination.

(d) *Approval of Accreditation Bodies.* (1) A person publishing a document setting forth guidance or requirements for the approval of accreditation bodies to accredit laboratories may petition the Director to approve such document for use as described in section 3(1)(B) of the Act (15 U.S.C. 5402(1)(B)).

(2) Petitions should be submitted to: Deputy Director, Technology Services, NIST, Mail Stop 2000, 100 Bureau Drive, Gaithersburg, MD 20899–2000.

(3) The Director shall approve such petition if the document provides equal or greater rigor and reliability as compared to ISO/IEC Guide 58, including revisions from time to time. A petition shall contain sufficient information to allow the Director to make this determination.

§ 280.102 Affirmations of Meeting Requirements of ISO/IEC Guides or Approved Documents.

(a) (1) An accreditation body accrediting third parties who certify manufacturing systems as fastener quality assurance systems as described in section 3(7)(B)(iii)(I) of the Act (15 U.S.C. 5402(7)(B)(iii)(I)) shall affirm to the Director that it meets the requirements of ISO/IEC Guide 61 (or another document approved by the Director under section 10(b) of the Act (15 U.S.C. 5411a(b)) and § 280.101(a) of this part), including revisions from time to time.

(2) An accreditation body accrediting laboratories as described in section 3(1)(B) of the Act (15 U.S.C. 5402(1)(B)) shall affirm to the Director that it meets the requirements of ISO/IEC Guide 58 (or another document approved by the Director under section 10(d) of the Act (15 U.S.C. 5411a(d)) and § 280.101(d) of this part), including revisions from time to time.

(b) An affirmation required under paragraph (a)(1) or (a)(2) of this section shall take the form of a self-declaration that the accreditation body meets the requirements of the applicable Guide, signed by an authorized representative of the accreditation body. No supporting documentation is required.

(c) Affirmations should be submitted to: Deputy Director, Technology Services, NIST, Mail Stop 2000, 100 Bureau Drive, Gaithersburg, MD 20899–2000.

(d) Any affirmation submitted in accordance with this section shall be considered to be a continuous affirmation that the accreditation body meets the requirements of the applicable Guide, unless and until the affirmation is withdrawn by the accreditation body.

§ 280.103 Laboratory Accreditation.

A laboratory may be accredited by any voluntary laboratory accreditation program that may be established by private sector persons(s) or by the National Voluntary Laboratory Accreditation Program for fasteners, established by the Director under Part 285 of this Title.

§§ 280.600, 280.602–280.623 (Subpart G) [Redesignated as §§ 280.200–280.22 (Subpart C)]

5. Subpart G (§§ 280.600, 280.602 through 280.623) is redesignated as subpart C, consisting of §§ 280.200 through 280.222.

6. Redesignated § 280.200 is revised to read as follows:

§ 280.200 Scope.

Section 280.201 of this part specifies that failure to take any action required by or taking any action prohibited by this part constitutes a violation of this part. Section 280.202 describes the penalties that may be imposed for violations of this part. Sections 280.204 through 280.222 establish the procedures for imposing administrative penalties for violations of this part.

7. Redesignated § 280.201 is amended by revising paragraphs (b) and (c), and removing paragraphs (d) through (o) to read as follows:

§ 280.201 Violations.

* * * * *

(b) *Sale of fasteners.* No manufacturer or distributor shall knowingly misrepresent or falsify, in connection with the sale or offer for sale of fasteners from a single lot,

(1) The record of conformance for the lot of fasteners;

(2) The identification, characteristics, properties, mechanical or performance marks, chemistry, or strength of the lot of fasteners; or

(3) The manufacturers' insignia.

(c) *Manufacturers' insignia.* No person shall sell, or offer for sale fasteners that are required by the applicable consensus standard or standards to bear an insignia identifying their manufacturer unless

(1) The fasteners bear such insignia; and

(2) The manufacturer has complied with the insignia recordation

requirements established under 15 U.S.C. 5407(b).

8. Redesignated § 280.203 is revised to read as follows:

§ 280.203 Administrative enforcement proceedings.

Sections 280.204 through 280.222 set forth the procedures for imposing administrative penalties for violations of the Act and this part.

9. Redesignated § 280.210 is amended by revising the last sentence of paragraph (d) to read as follows:

§ 280.210 Discovery.

* * * * *

(d) * * * In addition, enforcement by a district court of the United States may be sought under 15 U.S.C. section 5408(b)(6).

10. The reference to ''§ 280.607'' is revised to read ''§ 280.206'' in the following sections:

Redesignated § 280.211(b); Redesignated § 280.218(c).

§ 280.204 [Amended]

11. The reference to ''§ 280.608'' is revised to read ''§ 280.207'' in the following sections:

Redesignated § 280.204(a); redesignated § 280.208(b)(1).

12. The reference to ''§ 280.609'' is revised to read ''§ 280.208'' in the following sections:

Redesignated § 280.204(a); redesignated § 280.218(a).

13. In redesignated § 280.214(b), the reference to ''§ 280.613'' is revised to read ''§ 280.212''.

14. In redesignated § 280.207(c), the reference to ''§ 280.617'' is revised to read ''§ 280.216''.

15. In redesignated § 280.207(a), the reference to ''§ 280.618'' is revised to read ''§ 280.217''.

16. In redesignated § 280.219(c), the reference to ''§ 280.619(c)'' is revised to read ''§ 280.218(c)''.

17. The reference to ''§ 280.622'' is revised to read ''§ 280.221'' in the following sections:

Redesignated § 280.221(b); redesignated § 280.222(f).

18. The reference to ''§ 280.623'' is revised to read ''§ 280.222'' in the following sections:

Redesignated § 280.208(a); redesignated § 280.218(b); redesignated § 280.219(b)(2); redesignated § 280.220; redesignated § 280.221(a).

19. Subpart H (§§ 280.700 through 280.726) is redesignated as Subpart D consisting of §§ 280.300, 280.310–280.313 and 280.320–280.326.

20. Redesignated § 280.300 is revised to read as follows:

§ 280.300 Recorded insignia required prior to offer for sale.

If a fastener is required by the applicable consensus standard(s) to bear an insignia identifying its manufacturer, the manufacturer must:

(a) Record the insignia with the U.S. Patent and Trademark Office prior to any sale or offer for sale of the fastener, unless the specifications provide otherwise; and

(b) Apply the insignia through a raised or depressed impression to the head of any fastener that is sold or offered for sale; or if the fastener has no head, to another surface area in a legible manner. The insignia must be readable with no greater than 10x magnification.

21. Redesignated § 280.310 is amended by revising the heading, the first sentence of paragraph (a), paragraphs (b)(1), (b)(2), (b)(3), (b)(4)(ii), and (b)(5); redesignating existing paragraphs (b)(6) through (b)(8) as paragraphs (b)(7) through (b)(9), respectively; adding new paragraph (b)(6); revising redesignated paragraph (b)(7); and revising paragraph (c) to read as follows:

§ 280.310 Application for insignia.

(a) Each manufacturer must submit a written application for recordal of an insignia on the Fastener Insignia Register along with the prescribed fee. * * *

(b) * * *

(1) The name of the manufacturer;

(2) The address of the manufacturer;

(3) The entity, domicile, and state of incorporation, if applicable, of the manufacturer;

(4) * * *

(ii) A request for recordal of a trademark, which is the subject of either a duly filed application or a registration for fasteners in the name of the manufacturer in the U.S. Patent and Trademark Office on the Principal Register, indicating the application serial number or registration number and accompanied by a copy of the drawing that was included with the application for trademark registration, or a copy of the registration;

(5) A statement that the manufacturer will comply with the applicable provisions of the Fastener Quality Act;

(6) A statement that the applicant for recordal is a ''manufacturer'' as that term is defined in 15 U.S.C. 5402

(7) A statement that the person signing the application on behalf of the manufacturer has personal knowledge of the facts relevant to the application and that the person possesses the authority to act on behalf of the manufacturer;

* * * * *

(c) A manufacturer may designate only one trademark for recordal on the Fastener Insignia Register in a single application. The trademark application or registration that forms the basis for the fastener recordal must be in active status, that is, a pending application or a registration which is not expired, or canceled, at the time of the application for recordal.

* * * * *

22. Redesignated §280.311 is amended by revising the third sentence to read as follows:

§ 280.311 Review of the application.

* * * The Commissioner will notify the applicant for recordal of any defect in the application. * * *

23. Redesignated § 280.312 is amended by designating the existing text as paragraph (a), revising the last sentence of redesignated paragraph (a), and adding new paragraph (b) to read as follows:

§ 280.312 Certificate of Recordal.

(a) * * * The certificate of recordal shall display the recorded insignia of the manufacturer, and state the name, address, legal entity and domicile of the manufacturer, as well as the date of issuance of such certificate.

(b) Certificates that were issued prior to the enactment of the Act as amended shall remain in active status in accordance with the provisions of § 280.320 of this subpart, and may be maintained in accordance with the provisions of § 280.320 of this subpart, but only if:

(1) The certificate is held by a manufacturer who is required to comply with the recordation requirements of the Act as amended, and

(2) The fasteners associated with the certificate are fasteners that must bear an insignia pursuant to 15 U.S.C. 5407.

24. Redesignated § 280.313 is amended by revising paragraph (a) and the first sentence of paragraph (b) to read as follows:

§ 280.313 Recordal of additional insignia.

(a) A manufacturer to whom the Commissioner has issued an alphanumeric designation may apply for recordal of its trademark for fasteners if the trademark is the subject of a duly filed application or is registered in the U.S. Patent and Trademark Office on the Principal Register. Upon recordal, either the alphanumeric designation or the trademark, or both, may be used as recorded insignias.

(b) A manufacturer for whom the Commissioner has recorded a trademark as its fastener insignia may apply for issuance and recordal of an

alphanumeric designation as a fastener insignia. * * *

25. Redesignated § 280.320 is amended by revising paragraphs (a) and (b) and paragraphs (c)(1) through (c)(5); redesignating existing paragraphs (c)(6) through (c)(8) as paragraphs (c)(7) through (c)(9), respectively; adding a new paragraph (c)(6); and revising redesignated paragraph (c)(7) to read as follows:

§ 280.320 Maintenance of the certificate of recordal.

(a) Certificates of recordal remain in an active status for five years and may be maintained in an active status for subsequent five-year periods running consecutively from the date of issuance of the certificate of recordal upon compliance with the requirements of paragraph (c) of this section.

(b) Maintenance applications shall be required only if the holder of the certificate of recordal is a manufacturer at the time the maintenance application is required.

(c) * * *

(1) The name of the manufacturer;

(2) The address of the manufacturer;

(3) The entity, domicile, and state of incorporation, if applicable, of the manufacturer;

(4) A copy of manufacturer's certificate of recordal;

(5) A statement that the manufacturer will comply with the applicable provisions of the Fastener Quality Act;

(6) A statement that the applicant for recordal is a ''manufacturer'' as that term is defined in 15 U.S.C. 5402;

(7) A statement that the person signing the application on behalf of the manufacturer has knowledge of the facts relevant to the application and that the person possesses the authority to act on behalf of the manufacturer;

* * * * *

26. Redesignated § 280.321 is amended by revising the first sentence to read as follows:

§ 280.321 Notification of changes of address.

The applicant for recordal or the holder of a certificate of recordal shall notify the Commissioner of any change of address or change of name no later than six months after the change. * * *

27. Redesignated § 280.323 is amended by revising the second sentence of paragraph (a) and adding new paragraph (f) to read as follows:

§ 280.323 Transfer or assignment of the trademark registration or recorded insignia.

(a) * * * Any transfer or assignment of such an application or registration must be recorded in the Patent and Trademark Office within three months of the transfer or assignment.

* * * * *

(f) An alphanumeric designation that is reactivated after it has been transferred or assigned shall remain in active status until the expiration of the five year period that began upon the issuance of the alphanumeric designation to its original owner.

28. Redesignated § 280.324 is amended by revising paragraphs (a)(1) through (a)(3); redesignating existing paragraph (b) as paragraph (a)(4); revising the first two sentences of redesignated paragraph (a)(4); redesignating paragraph (c) as paragraph (b); and revising redesignated paragraph (b) to read as follows:

§ 280.324 Change in status of trademark registration or amendment of the trademark.

(a) * * *

(1) Issuance of a final decision on appeal which refuses registration of the application which formed the basis for the certificate of recordal;

(2) Abandonment of the application which formed the basis for the certificate of recordal;

(3) Cancellation or expiration of the trademark registration which formed the basis of the certificate of recordal; or

(4) An amendment of the mark in a trademark application or registration that forms the basis for a certificate of recordal. The certificate of recordal shall become inactive as of the date the amendment is filed. * * *

(b) Certificates of recordal designated inactive due to cancellation, expiration, or amendment of the trademark registration, or abandonment or amendment of the trademark application, cannot be reactivated.

29. Redesignated § 280.325 is revised to read as follows:

§ 280.325 Cumulative listing of recordal information.

The Commissioner shall maintain a record of the names, current addresses, and legal entities of all recorded manufacturers and their recorded insignia.

30. The reference to ''§ 280.710'' is revised to read ''§ 280.310'' in the following sections:

Redesignated § 280.311; redesignated § 280.312.

[FR Doc. 99–32240 Filed 12–14–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–42209; File No. S7–29–99]

RIN 3235–AH85

Unlisted Trading Privileges

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing a change to Rule 12f–2 under the Securities Exchange Act of 1934, which governs unlisted trading privileges (''UTP'') in listed initial public offerings (''IPOs''). Under the proposed rule change, a national securities exchange extending UTP privileges to an IPO security listed on another exchange would no longer be required to wait until the day after trading has commenced on the listing exchange to allow trading in that security. Instead, a national securities exchange would be permitted to begin trading in an IPO issue pursuant to UTP immediately after the first trade in the security is reported by the listing exchange to the Consolidated Tape.

DATES: Comments should be submitted on or before January 31, 2000.

ADDRESSES: Interested persons should submit three copies of their written data, views and opinions to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Comments may also be submitted electronically to the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–29–99. All submissions will be made available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, DC 20549. Electronically-submitted comments will be posted on the Commission's Internet website (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Kevin Ehrlich, Attorney, at (202) 942–0778 or Ira Brandriss, Attorney, at (202) 942–0148, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Background

Section 12(f) of the Act [1] governs when a national securities exchange (''exchange'') may extend UTP to a security, *i.e.*, allow trading in a security

[1] 15 U.S.C. 78l(f).

that is not listed and registered on that exchange.[2] Section 12(f) was substantially amended by the UTP Act of 1994 (''UTP Act'').[3] Prior to that time, exchanges had to apply to the Commission for approval before extending UTP to a particular security. This process entailed notice of the application in the **Federal Register**, a period for interested parties to comment on the application, and formal Commission approval based on a finding that extension of UTP to the security would be consistent with the maintenance of fair and orderly markets and the protection of investors. The UTP Act, among other matters, removed the application, notice, and Commission approval process from Section 12(f) (except in cases of Commission suspension of UTP in a particular security on an exchange). Accordingly, the UTP Act eliminated the extensive UTP approval process for all securities listed and registered on an exchange. Nevertheless, as discussed in detail below, the exchanges must wait one full day before they can extend UTP to a listed IPO security as defined in Section 12(f)(1)(G)(i) and (ii).[4]

A. The Waiting Period

In passing the UTP Act, Congress considered the question of whether a waiting period should be imposed on exchanges trading an IPO security pursuant to UTP. During the legislative process, conflicting views arose among interested parties concerning the appropriate waiting period, if any, for extending UTP to an IPO security.[5]

As a result, Congress temporarily permitted UTP exchanges to trade an IPO security only after two days of trading had occurred on the exchange on which the security was registered and listed. It also required the Commission to prescribe, by rule or regulation within 180 days of the legislation's enactment, the duration of the interval, if any, that UTP exchanges would be required to wait before trading in listed IPOs.[6] In a report to Congress on the UTP Act, the House Committee on Energy and Commerce described the interim waiting period as ''a temporary exception'' to the general authority it granted to exchanges to extend UTP immediately. In leaving the ultimate decision on the issue in the hands of the Commission, the Committee expressed the view that the rulemaking process would afford an opportunity for the conflicting concerns and suggestions to be examined and resolved.[7]

B. The Commission's Original Proposal: Elimination of the Waiting Period

Accordingly, on February 9, 1995, the Commission proposed for comment Rule 12f–2,[8] which would have virtually eliminated the waiting period.[9] Under the proposal, rather than continuing the temporary requirement to wait two days, UTP exchanges would have been permitted to begin trading in a listed IPO immediately after the first trade executed on the listing exchange was reported by that exchange to the Consolidated Tape. In proposing a one-trade interval for UTP in IPO securities, the Commission stated that:

> Shortening the interval for UTP in listed IPO securities should enhance the ability of exchanges to compete for order flow in the subject securities, especially in light of the fact that OTC dealers may trade IPO securities immediately upon effective registration with the Commission. Accordingly, in the absence of a compelling reason to impose a restriction that would inhibit competition among exchanges, the Commission initially believes that competing exchanges should be able to extend UTP to a listed IPO security after the first trade in the security on the listing exchange has been effected and reported.[10]

The Commission noted that testimony and evidence were presented during the legislative process preceding the UTP Act to show the negative impact that a mandatory waiting period has on competition. The Commission also pointed out that the third market traded listed IPO securities with no delay. The Commission solicited comment on the potential impact on markets and the distribution of securities, as well as the experience of the third market.

The Commission received eight letters in response to the original proposal, five of which supported the proposed rule, and three of which opposed it.[11] In addition, shortly before the proposed rules were published, the Commission received a study from the Philadelphia Stock Exchange (''Phlx''), submitted on behalf of itself, the Boston Stock Exchange, the Chicago Stock Exchange, and the Pacific Stock Exchange (now known as the Pacific Exchange).

The Phlx study showed high trading volume in IPOs during the early days of trading, particularly the first and second days of trading. Citing this data, the regional exchanges argued that a restriction on extending UTP to IPO securities created a substantial negative effect on competition, both in relation to the listing exchange and OTC dealers

[2] Section 12(a) generally prohibits trading on an exchange of any security that is not registered (listed) on that exchange. Section 12(f) excludes from this restriction securities traded pursuant to UTP that are registered on another national securities exchange. When an exchange ''extends UTP'' to a security, the exchange allows its members to trade the security as if it were listed on the exchange. Over-the-counter (''OTC'') dealers are not subject to the Section 12(a) registration requirement because they do not transact business on an exchange.

[3] Pub. L. No. 103–389, 108 Stat. 4081 (1994).

[4] Section 12(f)(1)(B), read jointly with Section12(f)(1)(A)(ii), as amended, provides this exception for listed IPO securities. In defining securities that fall within the exception, subparagraphs 12(f)(1)(G)(i) and (ii) provide:

(i) a security is the subject of an initial public offering if—

(I) the offering of the subject security is registered under the Securities Act of 1933; and

(II) the issuer of the security, immediately prior to filing the registration statement with respect to the offering, was not subject to the reporting requirements of Section 13 or 15(d) of this title; and

(ii) an initial public offering of such security commences at the opening of trading on the day on which such security commences trading on the national securities exchange with which such security is registered.

[5] At Congressional hearings, testimony and evidence were presented, on one hand, to show the negative impact that a mandatory waiting period for UTP would have on competition. An interested party in favor of a mandatory waiting period asserted, on the other hand, that listed IPO securities should trade in a central location for a ''short'' period of time to help ensure market efficiency immediately following an IPO, and that immediate UTP in listed IPO securities could increase the cost of raising capital for issuers.

[6] Amended Section 12(f)(1)(C) required exchanges (until the earlier of the effective date of a Commission rule, or 240 days after the enactment of the UTP Act) to wait until the third trading day in a listed IPO security before trading the security pursuant to UTP.

[7] The Committee stated that:

> The Committee expects that, in undertaking the IPO rulemaking authorized under the bill, the Commission will seek comments on the benefits associated with streamlining the regulatory process and enhancing competitive opportunities among market centers with respect to UTP in IPOs, and the identification of the negative effects if any that granting immediate UTP might have on the distribution of these securities. The Committee further expects the Commission to consider the experience of the third market trading in listed IPOs in the course of its examination of these questions. Finally, the Committee expects the markets to cooperate in providing the Commission with data regarding the nature and effect of trading activity (including, for example, any volatility effects on the security) in connection with IPO listings in order to enable the Commission to determine whether the benefits of confining early trading in IPOs to one marketplace are outweighed by the benefits of removing regulatory delays that inhibit competition among markets.

H.R. Rep. No. 626, 103d Cong., 2d Sess. (1994).

[8] 17 CFR 240.12f–2.

[9] Exchange Act Release No. 35323 (Feb. 2, 1995), 60 FR 7718 (Feb. 9, 1995).

[10] Exchange Act Release No. 35323 (Feb. 2, 1995), 60 FR 7718, 7720 (Feb. 9, 1995).

[11] Favoring the proposal were the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc., the Pacific Stock Exchange, Inc. (one letter commenting directly on the proposal, and one letter responding to negative comments), and the Philadelphia Stock Exchange, Inc. (letter responding to negative comments). Opposing the proposal were the New York Stock Exchange, Inc., CS First Boston, and Lehman Brothers. For a summary of the comments, *see* Exchange Act Release No. 35637 (April 21, 1995), 60 FR 20891 (April 28, 1995).

trading listed securities (the ''third market'').[12]

On the other hand, the commenters opposing a reduced waiting period—the New York Stock Exchange (''NYSE'') and two underwriting firms—maintained that immediate regional exchange trading of IPOs would increase price volatility in the trading of IPO securities. With IPOs trading immediately on UTP exchanges, they argued, underwriters would not have sufficient time to ensure an orderly distribution of the securities.[13] A study produced by Lehman Brothers at the time showed higher volatility in some Nasdaq IPOs than in selected NYSE IPOs. Opponents of the proposal cited this data in asserting that dispersed initial trading of IPOs is more volatile than initial centralized trading.[14]

C. Adoption of a Revised Version

On April 21, 1995, the Commission adopted a revised version of its original proposal. Instead of allowing UTP exchanges to trade a listed IPO as soon as the first trade on the listing exchange was reported to the Consolidated Tape, the revised rule required them to wait until the opening of business on the day following the IPO. In other words, a one-day trading delay was established for UTP in listed IPOs.[15]

In arriving at this position in 1995, the Commission acknowledged the substantial volume of trading that occurs on the initial trading days of IPOs. As a general matter, the Commission agreed with the regional exchanges that early UTP in IPO securities would enhance the ability of multiple markets to compete for this volume. However, it also recognized a possibility that virtually immediate UTP in IPO securities could complicate the pricing and orderly distribution of IPO securities by increasing the risk of price volatility as the securities are distributed to the public. The Commission noted particularly the concern raised by the underwriters that believed that IPO pricing could be at risk if there was no opportunity for early centralized trading. Finally, a significant factor in the Commission's decision to adopt a one-day trading delay in 1995 was the fact that insufficient data was available with which to assess the potential impact of immediate IPO trading in multiple markets.

The Commission stated at the time, however, that it would continue to monitor the trading of IPOs, and that it would be willing to consider revisiting the question of the appropriate waiting period for extending UTP to listed IPO securities after experience had been gained with the amended rules.[16] The Commission believes that it is now appropriate to revisit the one-day waiting period based on its experience over the last four years, as well as results of a new study submitted to the Commission by several regional exchanges.

D. The 1998 Study

In August 1998, the Chicago Stock Exchange, the Cincinnati Stock Exchange, and the Pacific Exchange presented to the SEC for review a new study (''1998 Study''), examining the effects of immediate multiple trading of IPO securities.[17] The study was conducted at the request of the Chicago Stock Exchange in response to the Commission's 1995 indication that it would be open to reconsidering the issue when new data became available.

The study comprised two sets of inquiries. Each compared a group of newly issued securities that were permitted to trade immediately on more than one exchange, with a group of IPO securities that were similar in type but that were subject to the one-day trading delay. The study examined whether bid-ask spreads and intraday price volatility were greater for the IPOs that were dually or multiply traded than for the IPOs that were not, compiling data from the first five days of trading for each of the securities.

Specifically, the first analysis compared a group of nine dually listed IPOs and six spin-offs[18] that traded on more than one exchange[19] with a similar group of IPO securities that were not dually or multiply listed. The two groups of offerings were issued during the same general time period,[20] and were similar in terms of the industry of the issuer and the amount of proceeds from the offering. Because an IPO as defined under the Act includes both traditional IPOs and spin-offs, the study attempted to include both in its analysis. Moreover, like IPOs, the spin-offs involve an issuance of shares where there is no previous basis to establish an opening price. The sampling for comparison was small because IPOs are rarely listed on more than one exchange.

This first inquiry found that price volatility was higher on the first day of trading for both groups of IPOs and spin-offs than on any of the subsequent four days. However, the price volatility of IPOs and spin-offs traded on only one exchange was approximately 30% higher than that of the IPOs and spin-offs that were traded on at least two exchanges. In addition, in its comparison of bid-ask spreads, the study showed that there was no statistically significant difference between the two groups. Thus, the study concluded, neither an analysis of price volatility nor a survey of bid-ask spreads

[12] The Chicago Stock Exchange also stated that it had listed IPOs simultaneously with the NYSE and had seen no adverse effect. Similarly, the Phlx study found, in the case of five IPOs that were dually or multiply listed on at least one regional exchange and the NYSE, that the regional trades on the first two days virtually always were within the NYSE daily trading range.

[13] Two commenters advocated at the time that Congress's temporary two-day delay should continue in place, while the third recommended the retention of, at the very least, a one-day trading delay.

[14] Supporters countered that any increase in price volatility in early trading of IPOs is limited to upward price movement. Supporters also argued that price volatility is generated by supply and demand, and, as a natural by-product of a free and open market, should never be used as a reason to exclude some equally-regulated competitors from the marketplace.

[15] *See* Exchange Act Release No. 35637 (April 21, 1995), 60 FR 20891 (April 28, 1995).

[16] *Id.* at 20894.

[17] Jay Ritter, Joe B. Cordell Eminent Scholar, University of Florida, ''Unlisted Trading Privileges in Listed IPOs: Analysis of the One-Day Delay,'' June 1998, available in public File No. S7–29–99.

[18] In the spin-offs, the shareholders of a parent company were issued IPO shares in a subsidiary company. Spin-offs are considered to be ''technical IPOs''—*i.e.,* transactions that are not traditional initial issuances of shares to the general public in exchange for cash, but that are currently included within the definition of IPO in Section 12 of the Act.

[19] Spin-offs and IPOs that were not considered IPOs under Section 12 of the Act could be traded immediately on other exchanges.

[20] The dually or multiply listed IPOs and spin-offs examined in this section of the study began trading between 1993 and 1997. The comparison group of IPOs and spin-offs listed on only one exchange were selected from among IPOs and spin-offs that began trading between 1995 and 1997 because the one-day delay for UTP trading of such securities first went into effect in 1995. The comparison group was selected on the basis of similar industries and proceeds. The sample group of dually-listed IPOs included the following companies: Dr. Pepper/Seven-Up, Dean Witter/Discover, Allstate, Urban Shopping Centers, Pac-Tel, Guidant Corp., PMI Group, Hambrecht & Quist, Dominick's Supermarkets, Western Atlas Inc., Lehman Bros. Holdings, Promus Hotel Corp., Host Marriott Services, 360° Communications, and Imation Corp. The control group of non-dually listed IPOs included: Fresh Del Monte Produce, Donaldson Lufkin Jenrette, American States Financial, Prentiss Properties Trust, Excel Communications, Global DirectMail, capMAC Holdings, Friedman Billings Ramsey, Circle K, Diamond Offshore Drilling, Contifinancial, Renaissance Hotel Group, Red Roof Inns, Berg Electronics, and Bell & Howell.

In terms of intraday price volatility (the daily standard deviation of returns), the sample group produced volatility of 5.3% while the control group had volatility of 6.89%. This difference suggests that non-dually listed IPOs tend to be 30% more volatile than dually listed IPOs. The study also showed that the bid-ask spreads for each group were similar. The bid-ask spreads for the dually listed group were a statistically insignificant 10% higher than the control group for the first day of trading and only 5% higher by the second day of trading.

revealed any evidence of damage to market quality caused by immediate trading of IPOs on non-listing exchanges.

The second analysis compared a group of securities issued by companies that underwent some type of restructuring and could be dually or multiply traded because they were not subject to the UTP prohibition, with a group of stocks that similarly were issued as a result of reorganizations but that were subject to the UTP prohibition. Although this sampling did not include securities of a private company going public for the first time, the reorganizations are considered ''technical IPOs'' because they meet the Section 12(f) definition of an IPO for the purposes of the statutory one-day trading delay.[21] The analysis compared data between 1994 and 1997 for eleven companies that were not subject to the UTP prohibition with six companies that were.

This second inquiry found that the price volatility on the first day of trading in either group of securities was not exceptionally high. Moreover, the price volatility of new issuances that traded on more than one exchange the first day did not differ significantly from that of the technical IPOs trading on only one exchange. The study also found no significant differences in the bid-ask spreads between the technical IPOs and the comparison group that traded on more than one exchange the first day.[22]

The study concluded from these analyses that there is no empirical basis for the contention that multiple exchange trading on the first day of an IPO adversely affects market quality, either by increasing price volatility or widening bid-ask spreads. In fact, the evidence indicated that listed IPOs that are not traded on more than one exchange can be more volatile than dually or multiply listed IPOs. The study further noted that the third market, which is not subject to the one-day delay, currently competes with the listing exchange in trading IPOs on the first day with no visible adverse effect.

In addition, the study contained data demonstrating that regional exchanges have been unable to attract a substantial share of first day trading volume in IPOs even when not barred by the statute from participating. For example, in the case of the dually or multiply listed IPOs studied, the regional exchanges garnered an average of only 1.8% of the total trading volume on the first day. Although the proportion increased over the next four trading days, it still remained comparatively small. In the case of IPOs subject to the one-day trading delay, the regional exchanges accounted for no more than an average 5% of the total trading volume for days two through five. In view of the small amount of volume at issue, the study concluded that eliminating the one-day delay should not have a major impact on the market as a whole. The study also observed that the current ban on first day trading puts regional exchanges at a competitive disadvantage vis-a-vis the third market, which is not subject to the one-day delay.

II. Discussion

A. Introduction

The Commission preliminarily believes that there is an absence of significant evidence that the delay protects the markets and that, accordingly, there is no justification for the continuance of the one-day trading delay. Recent experience appears to support changing the rule. The one-day trading delay appears to provide no real benefits to the market for IPOs and actually inhibits competition among markets. The lack of any problems over the last four years with reducing the waiting period from two days to one day supports this conclusion.[23] In addition, the 1998 study discussed above provides further evidence that the one-day trading delay should be eliminated or reduced.

As noted above, when the Commission first considered this issue in 1995, two commenters supported a two-day waiting period for IPOs, arguing that IPOs would not have an orderly distribution and that there would be increased price volatility on these two days. This, however, has not turned out to be a concern on the second trading day as evidenced by the successful trading since 1995 of IPO securities on the second trading day by multiple markets. Therefore, based on this experience and the 1998 Study, the Commission proposes to allow exchanges to extend UTP to IPO securities after the first trade on the listing market is reported to the Consolidated Tape.

B. Proposed Amendment

The Commission is proposing an amendment to Rule 12f–2(a)[24] to provide that an exchange may extend UTP to a listed IPO security when at least one transaction in the subject security has been effected on the listing exchange and the transaction has been reported pursuant to an effective transaction reporting plan as defined in Rule 11Aa3–1 under the Act.[25] The proposed rule would reduce the mandatory waiting period (or ''interval,'' as it is described in the Act) for extending UTP in listed securities from one trading day, as specified in the current Rule 12f–2(a), to the time that it takes to effect and report the initial trade in the security on the listing exchange.

The Commission believes that it is appropriate to minimize regulatory restraints on competition for trading listed IPO securities. The proposed rule change should enhance the ability of exchanges to compete for order flow in these securities, especially in light of the fact that OTC dealers and alternative trading systems may already trade IPO securities immediately upon effective registration with the Commission. The Commission sees no compelling reason to maintain a restriction that inhibits competition among the exchanges.

Moreover, the 1995 and 1998 studies show no evidence that the one-day trading delay provides any tangible benefits to market quality. In fact, the 1998 Study suggests that greater price volatility actually exists on the first day of an IPO with the trading delay in place. The 1998 Study examined both bid-ask spreads and price volatility and

[21] *See* note 4, *supra.*

[22] The second analysis compared eleven stocks of issuers that underwent some form of restructuring between May 1994 and October 1997 that were not deemed to be an IPO, with six stocks that underwent a restructuring between April 1997 and October 1997 but that were deemed to be an IPO. The control group of stocks that were not considered to be an IPO included: Illinova Corp., Rexel Corp., Burlington Northern Santa Fe, Walt Disney, Rockwell International, Tenneco, Enron Corp., Rough Industries, Texas Utilities Co., First Republic Bancorp, and Excel Communications. The sample group of stocks that were considered to be an IPO included: CTG Resources, New Century Energies, Pioneer Natural Resources, Fred Meyer Inc., Keyspan Energy, and U.S. Restaurant Properties.

The sample group of technical IPOs was less volatile than the control group for four of the first five days of trading after the restructuring. The ratio of volatility of the sample group compared to the control group for the first five days of trading was: 0.96, 1.55, 0.59, 0.80 and 0.81. A ratio of 1 shows identical volatility. Likewise, the bid-ask spreads were closer for the sample group than the control group for the first five days of trading after a restructuring. The ratio of bid-ask spreads of the sample group compared to the control group for the first five days of trading was: 0.80, 0.88, 0.69, 0.81, and 0.93. Again, a ratio of 1 shows identical bid-ask spreads.

[23] While there have been frequent questions regarding which transactions qualify as IPOs under the rule, there have not been significant problems in terms of IPO pricing.

[24] 17 CFR 240.12f–2(a).

[25] 17 CFR 240.11Aa3–1. The remaining paragraphs of Rule 12f–2, paragraphs (b) and (c), which currently define subject securities and require that the extension of UTP to an IPO security comply with all the other provisions in Section 12(f), and the rules thereunder, would remain unchanged.

was unable to determine that there was an adverse impact on market quality resulting from the trading of IPO securities in multiple markets.[26] Especially in view of the rapidly expanding choices that investors have for trade execution, placing unnecessary restrictions on some markets in favor of others tends to hamper competition. While the listing exchange should have the benefit of listing the IPO, other markets should be permitted to provide a place for investors to trade those securities.

In 1995, the Commission expressed concern about maintaining the delay but decided that prudence dictated a cautious approach. After several years of experience with the one-day trading delay and analysis of the impact, the Commission preliminarily believes that it is now appropriate to lift the one-day trading delay for IPOs.

At the same time, the Commission preliminarily believes it necessary to retain a minimal, one trade waiting requirement before non-listing exchanges may begin trading. The first transaction in an IPO, as disseminated on the Consolidated Tape, conveys essential information to the public concerning the price of the security set by the underwriting process. In addition, the timing of the initial trade and commencement of trading in a new issue entail significant coordination involving the issuer, the listing exchange, and the underwriters of the public offering of the security. If competing exchanges were to allow their members to trade a listed IPO security before it initially traded on the listing exchange, it could be difficult to ensure that all the preparation for the IPO had been completed before public trading in the security commenced.[27]

[26] The Commission recognizes that the number of IPOs studied was limited due to the low number of multiple IPO listings and the current restrictions. The Commission still preliminarily believes that the study's methodology is reasonable. For the definition of ''IPO,'' *see* note 4, *supra.*

[27] On December 9, 1999, Commission staff issued a no-action letter to the regional exchanges clarifying the definition of IPO for purposes of Rule 12f–2. The no-action letter would permit the regional exchanges to begin trading securities in certain ''technical IPO'' transactions on the same day those securities begin trading on another exchange on which they are listed. The no-action letter identifies six examples of offerings that meet the definition of IPO under Section 12(f) of the Act, but that are not traditional, first time capital raising efforts. These examples involve offerings of securities to an existing class of security holders rather than an initial offering of shares to the general public in exchange for cash. *See* letter from Annette L. Nazareth, Director, Division of Market Regulation, SEC, to Paul B. O'Kelly, Executive Vice President, Market Regulation and Legal, The Chicago Stock Exchange, dated December 9, 1999.

C. Solicitation of Comments

The Commission seeks comment on the one trade waiting period as proposed. To the extent that commenters believe that the current one day waiting period should remain unchanged, the Commission encourages commenters to submit specific data illustrating the need to retain the current waiting period. In addition, should a commenter believe that a different interval should be used, the commission encourages commenters to submit specific data supporting that belief. Relevant data might include the potential negative effects on the pricing of an IPO. The Commission also seeks comment on whether any changes to the consolidated quotation system or trade reporting systems should be made as a result of reducing the waiting interval from one day to the first trade on the listing exchange. In addition, the Commission solicits comment on the possible impact in trading and whether additional procedures or enhancements may be necessary to ensure that a UTP market does not commence trading prior to the first trade on the listing exchange.

III. Costs and Benefits of the Proposed Amendments

The Commission is considering the costs and benefits of the proposed amendment to the Rule. In terms of potential benefits to market participants should the proposal be adopted, the proposed amendment would allow UTP exchanges to compete with the listing exchange and the third market for order flow on the first day an IPO starts trading. Investors benefit when more participants offer liquidity to the market. The proposed amendment would also reduce compliance costs for UTP exchanges because they would not be required to analyze transactions to determine which ones are IPOs under the statutory definition and subject to the current one-day delay. As long as they wait for one trade on the listing exchange, UTP exchanges would be free to extend UTP to that security. In addition, issuers would benefit from wider distribution of IPO securities and greater opportunities for price discovery.

The proposed amendment could impact the listing exchanges because they would lose a one-day trading advantage over other exchanges. In addition, the members of the listing exchange could lose business because order flow might be lost to other exchanges. The Commission does not anticipate any other direct or indirect costs to U.S. investors or other market participants because the rule would impose no recordkeeping or compliance burdens.

The Commission requests comment on the costs and benefits of the proposed amendment to Rule 12f–2(a). In particular, the Commission asks commenters to address what, if any, effect the proposed rule amendment could have on exchanges and their members and whether the proposed amendment would generate the anticipated benefits or impose any costs on market participants. In addition, the Commission asks commenters to address what, if any, effect the proposed rule amendment could have on issuers and other market participants.

IV. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (''IRFA'') is being prepared in accordance with Section 3(a) of the Regulatory Flexibility Act (''RFA'').[28] It relates to a proposed amendment to Rule 12f–2(a)[29] under the Exchange Act. The proposed amendment would permit exchanges to extend UTP to an IPO security listed on another exchange after the first trade on the listing exchange is reported to the Consolidated Tape, rather than waiting one full trading day as currently required.

A. Reasons for and Objectives of the Proposed Actions

This amendment is proposed to further the purposes of Section 11A(a)(1)(D) of the Exchange Act[30] by fostering efficiency, enhancing competition, increasing the amount of information available to brokers, dealers, and investors, facilitating the offsetting of investors' orders, and contributing to best execution of those orders. The proposal would address a barrier to competition that currently operates as a restriction on trading activity. Under the current one-day trading delay, exchanges that do not list IPOs are unable to compete with electronic trading systems and the third market for order flow. The proposed rule change would facilitate competition among various markets for order flow and enhance investor options for order execution. The one-day trading delay does not appear to provide any significant benefit to the marketplace, but rather appears to create a barrier to competition. The proposed rule amendment would improve competition and investor choice.

[28] 5 U.S.C. 603(a).

[29] 17 CFR 240.12f–2(a).

[30] 15 U.S.C. 78k–1(a)(1)(D).

B. Legal Basis

Sections 12(f)(1)(C) and 12(f)(1)(D) provide the Commission with rulemaking authority to prescribe procedures or requirements for extending UTP to any security. In addition, Section 11A(a)(1)(D) sets forth objectives for linked markets that the Commission should pursue. These include fostering efficiency, enhancing competition, increasing the amount of information available to brokers, dealers, and investors, facilitating the offsetting of investors' orders, and contributing to best execution of those orders. The changes to Rule 12f–2(a) are also proposed under the Commission's authority set forth in Section 23(a) of the Exchange Act.

C. Small Entities Subject to the Rule

The proposal would directly affect the national securities exchanges, none of which is a small entity. Paragraph (e) of the Rule 0–10 [31] states that the term ''small business,'' when referring to an exchange, means any exchange that has been exempted from the reporting requirements of § 240.11Aa3–1. Thus there would be no impact for purposes of the RFA on small businesses.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The proposal would not impose any new reporting, recordkeeping, or other compliance requirements on exchanges, or entities indirectly affected by the proposal.

E. Duplicative, Overlapping or Conflicting Federal Rules

The Commission believes that there are no rules that duplicate, overlap, or conflict with the proposed rules.

F. Significant Alternatives

The RFA directs the Commission to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant economic impact on small entities. In connection with the proposal, the Commission considered the following alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the Rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the Rule, or any part thereof, for small entities.

The Commission believes that none of the above alternatives is applicable to the proposed amendment. The exchanges are directly subject to the requirements of Rule 12f–2(a) and are not ''small entities'' because they are all national securities exchanges that do not meet the definition of small entity. Therefore, the Commission does not believe the alternatives are applicable in the present proposal.

G. Solicitation of Comments

The Commission encourages the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, the Commission seeks comment on: (i) The number of small entities, if any, that would be affected by the proposed rule; and (ii) the impact that the proposed amendment would have, if any, on such entities. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendment is adopted, and will be placed in the same public file as comments on the proposed rules themselves. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–29–99; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters also will be posted on the Commission's Internet web site (http://www.sec.gov).

V. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed amendment does not impose recordkeeping or information collection requirements, or other collections of information that require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

VI. Effects on Competition, Efficiency, and Capital Formation

Section 23(a)(2) of the Exchange Act [32] requires the Commission, when promulgating rules under the Act, to consider the anti-competitive effects of such rules. Moreover, Section 3 of the Exchange Act,[33] as amended by the National Securities Markets Improvement Act of 1996,[34] provides that whenever the Commission is engaged in a rulemaking and is required to determine whether an action is necessary or appropriate in the public interest, the Commission must consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. The Commission notes that the 1998 Study submitted by the regional exchanges in support of their rulemaking petition appears to indicate that the rule change would promote competition.

The Commission requests comment on any anti-competitive effects the proposed rule change may have on national securities exchanges, associations, third markets, order routing firms, investors, issuers, and other market participants. As stated above, the Commission also notes that it has received a study that appears to indicate that the proposed rule change would promote competition. The Commission requests comment on, and appropriate data regarding the impact of, the proposed rule change would promote efficiency, competition, and capital formation.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission is also requesting information regarding the potential impact of the proposed rule on the economy on an annual basis. Commentators should provide empirical data to support their views.

VII. Statutory Authority

The rule amendments in this release are being proposed pursuant to 15 U.S.C. 78 *et seq.*, particularly Sections 11A(a)(1)(D), 12(f)(1)(C), 12(f)(1)(D), and 23(a) of the Exchange Act, 15 U.S.C. 78k–1, 78l(f)(1)(C), 78l(f)(1)(D), 78w(a).

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission proposes to amend Part 240 of Chapter II of Title 17 of the Code of Federal Regulations as follows:

PART 240–GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*,

[31] 17 CFR 240.0–10(e).

[32] 15 U.S.C. 78w(a)(2).

[33] 15 U.S.C. 78c.

[34] Pub. L. No. 104–290, 110 Stat. 3416 (1996).

78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.12f–2 is amended by revising paragraph (a) to read as follows:

§ 240.12f–2 Extending unlisted trading privileges to a security that is the subject of an initial public offering.

(a) *General Provision.*—A national securities exchange may extend unlisted trading privileges to a subject security when at least one transaction in the subject security has been effected on the national securities exchange upon which the security is listed and the transaction has been reported pursuant to an effective transaction reporting plan, as defined in § 240.11Aa3–1.

* * * * *

Dated: December 9, 1999.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–32472 Filed 12–14–99; 8:45 am]

BILLING CODE 8010–01–U

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Family Member Dental Plan

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: On Wednesday, November 24, 1999, (64 FR 66126), the Department of Defense published a proposed rule on TRICARE Family Member Dental Plan. This document is published to extend the public comment period.

DATES: Comment period has been extended until January 14, 2000.

ADDRESSES: Address comment concerning the proposed rule to TRICARE Management Activity/Special Contract Operations Branch, 16401 East Centretech Parkway, Aurora, CO 80011–9043.

FOR FURTHER INFORMATION CONTACT: Col. Brian Grassi, 303–676–3496.

Dated: December 9, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison, Department of Defense.

[FR Doc. 99–32305 Filed 12–14–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Parts 160 through 164

RIN 0991–AB08

Standards for Privacy of Individually Identifiable Health Information

AGENCY: Office of the Assistant Secretary for Planning and Evaluation, DHHS.

ACTION: Notice of extension of comment period for proposed rule.

SUMMARY: This notice extends the comment period on a proposed rule published in the **Federal Register** on November 3, 1999 (64 FR 59918). The original date that the comment period would end was January 3, 2000. That date will now be extended until February 17, 2000.

In that rule, we propose standards to protect the privacy of individually identifiable health information maintained or transmitted in connection with certain administrative and financial transactions. The proposed rules, which would apply to health plans, health care clearinghouses, and certain health care providers, proposed standards with respect to the rights individuals who are the subject of this information should have, procedures for the exercise of those rights, and the authorized and required uses and disclosures of this information.

The use of these standards would improve the efficiency and effectiveness of public and private health programs and health care services by providing enhanced protections for individually identifiable health information. These protections would begin to address growing public concerns that advances in electronic technology in the health care industry are resulting, or may result, in a substantial erosion of the privacy surrounding individually identifiable health information maintained by health care providers, health plans and their administrative contractors. This rule would implement the privacy requirement of the Administrative Simplification subtitle of the Heath Insurance Portability and Accountability Act of 1996.

DATES: The comment period is extended to no later than 5 p.m. on February 17, 2000.

ADDRESSES: Submit electronic comments at the following web site: http://aspe.hhs.gov/admnsimp/.

Mail comments (1 original, 3 copies, and, if possible, a floppy disk) to the following address: U.S. Department of Health and Human Services, Assistant Secretary for Planning and Evaluation, Attention: Privacy-P, Room G–322A, Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201.

If you prefer, you may deliver your written comments (1 original, 3 copies, and, if possible, a floppy disk) to the following address: Room 442E, 200 Independence Avenue, SW, Washington, DC 20201.

See the **SUPPLEMENTARY INFORMATION** section for further information on comment procedures, availability of copies of this document and electronic access to this document.

FOR FURTHER INFORMATION CONTACT: Roxanne Gibson (202) 260–5083.

SUPPLEMENTARY INFORMATION: Reason for extension, comment procedures, availability of copies, and electronic access.

Reason for extension: We originally proposed a 60-day period for public comment of this proposed rule. The original comment period would have closed on January 3, 2000. Because of the scope of the proposed rule, the significant implications for the health care system and the substantial public interest in the proposed rule, we believe that additional time would allow for more informative and thoughtful comments. Therefore, we are extending the comment period until February 15, 2000.

Comment procedures: All comments should include the full name, address and telephone number of the sender or a knowledgeable point of contact. Written comments should include 1 original and 3 copies. If possible, please send an electronic version of the comments on a 3½ inch DOS format floppy disk in Adobe Acrobat Portable Document Format (PDF) (preferred) HTML, ASCII text, or popular word processor format (Microsoft Word, Corel WordPerfect).

Because of staffing and resource limitations, we cannot accept comments by electronic mail or facsimile (FAX) transmission, and all comments and content are to be limited to the 8.5 wide by 11.0 high vertical (also referred to as ''portrait'') page orientation. Additionally, it is requested that if identical/duplicate comment submissions are submitted both electronically and in paper form that each submission clearly indicate that it is a duplicate submission. In each comment, please specify the section of this proposed rule to which the comment applies.

Comments received in a timely fashion will be available for public

inspection, as they are received, generally beginning approximately three weeks after publication of a document in Room 442E of the Department's offices at 200 Independence Avenue, SW., Washington, DC 20201 on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–260–5083).

After the close of the comment period, comments submitted electronically and written comments that we are technically able to convert will be posted on the Administrative Simplification web site (*http://aspe.hhs.gov/admnsimp/*).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by fax to (202) 512–2250. The cost for each copy is $8.00. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

Electronic Access: This document is available electronically at *http://aspe.hhs.gov/admnsimp/* as well as at the web site of the Government Printing Office at *http://www.access.gpo.gov/su__docs/aces/aces140.html.*

Note to reader: This proposed rule is one of several proposed rules that are being published to implement the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996. We propose to establish a new 45 CFR subchapter C, Parts 160 through 164. Part 160 will consist of general provisions, Part 162 will consist of the various Administrative Simplification regulations relating to transactions and identifiers, and Part 164 will consist of the regulations implementing the security and privacy requirements of the legislation. Proposed Part 160, consisting of two subparts (Subpart A—General Provisions, and Subpart B—Preemption of State Law) will be exactly the same in each rule, unless we add new sections or definitions to incorporate additional general information in the later rules.

Dated: December 10, 1999.

Donna Shalala,

Secretary.

[FR Doc. 99–32484 Filed 12–10–99; 3:23 pm]

BILLING CODE 4110–60–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 99120–332–9332–01; I.D. 110499B]

RIN 0648–AM79

Atlantic Highly Migratory Species; Pelagic Longline Management

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to prohibit pelagic longline fishing at certain times and in certain areas within the Exclusive Economic Zone of the Atlantic Ocean off the coast of the Southeastern United States and in the Gulf of Mexico. This proposed rule is necessary to address pelagic longline bycatch and incidental catch of overfished and protected species. The intent of the proposed action is to reduce that bycatch and incidental catch by pelagic longline fishermen who target highly migratory species (HMS).

DATES: Comments must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5:00 p.m., eastern standard time, on February 11, 2000. Public hearings on this proposed rule will be held in January and February, 2000. Times for the public hearings will be specified in a separate document in the **Federal Register** to be published at a later date.

ADDRESSES: Written comments on the proposed rule should be submitted to Rebecca Lent, Chief, HMS Division (SF/1), Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments also may be sent via facsimile (fax) to 301–713–1917. Comments will not be accepted if submitted via e-mail or Internet. For copies of the draft Technical Memorandum and Supplemental Environmental Impact Statement/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (DSEIS/RIR/IRFA), contact Jill Stevenson at 301–713–2347 or write to Rebecca Lent.

FOR FURTHER INFORMATION CONTACT: Jill Stevenson at 301-713-2347, fax 301–713–1917, e-mail jill.stevenson@noaa.gov; or Buck Sutter at 727–570–5447, fax 727–570–5364, e-mail buck.sutter@noaa.gov.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish and tuna fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) is implemented by regulations at 50 CFR part 635. The Atlantic pelagic longline fishery is also subject to the requirements of the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), and the International Plan of Action for Reducing the Incidental Catch of Seabirds in Longline Fisheries because of documented interactions with sea turtles, marine mammals, and sea birds.

Pelagic Longline Fishery

Pelagic longline gear is the dominant commercial fishing gear used by U.S. fishermen in the Atlantic Ocean to target highly migratory species. The gear consists of a mainline, often many miles in length, suspended in the water column by floats and from which baited hooks are attached on leaders (gangions). Though not completely selective, longline gear can be modified (e.g., gear configuration, hook depth, timing of sets) to target preferentially yellowfin tuna, bigeye tuna, or swordfish.

Observer data and vessel logbooks indicate that pelagic longline fishing for Atlantic swordfish and tunas results in catch of non-target finfish species (including bluefin tuna, billfish, and undersized swordfish) and protected species, including endangered sea turtles. Also, this fishing gear incidentally hooks marine mammals and sea birds during tuna and swordfish operations. The bycatch of animals that are hooked but not retained due to economic or regulatory factors contributes to overall fishing mortality. Such bycatch mortality may significantly impair rebuilding of overfished finfish stocks or the recovery of protected species.

Bycatch Reduction Strategy

Atlantic blue marlin, white marlin, sailfish, bluefin tuna, and swordfish are considered overfished. In the HMS FMP and Amendment 1 to the Atlantic Billfish FMP (Billfish Amendment), NMFS adopted a strategy for rebuilding these stocks through international cooperation at the International Commission for the Conservation of Atlantic Tunas (ICCAT). This strategy primarily involves reducing fishing mortality through the negotiation of country-specific catch quotas according to rebuilding schedules. However, the

contribution of bycatch to total fishing mortality must be considered in the HMS fisheries, and in fact, ICCAT catch quotas for some species require that countries account for dead discards. The swordfish rebuilding plan that was adopted by ICCAT at its 1999 meeting provides added incentive for the United States to reduce swordfish discards. Additionally, Magnuson-Stevens Act national standard 9 for fishery management plans requires U.S. action to minimize bycatch and bycatch mortality to the extent practicable.

In the draft HMS FMP and proposed regulations (64 FR 3154, January 20, 1999), NMFS proposed a time-area closure during July-September in the Florida Straits to reduce the bycatch of undersized swordfish by pelagic longline fishermen. The Florida Straits area was proposed for closure primarily due to high discard rates of undersized swordfish, though some reductions in billfish mortality were also anticipated. The proposed Florida Straits closure was rejected in the Final HMS FMP because NMFS concurred with public comments that indicated that the area proposed was too small to be effective at reducing bycatch and incidental catch of all species of concern and because NMFS agreed that a more comprehensive assessment of the bycatch problem was warranted. Commercial and recreational fishermen and representatives of environmental groups expressed concerns that fishing effort would be displaced into adjacent ocean areas where bycatch rates of certain species were likely to be similar to, or higher than, those rates in the proposed closed area. NMFS agreed that further analysis of the effects of reallocation of effort was needed.

NMFS indicated in the final HMS FMP and Billfish Amendment that a more comprehensive approach to time-area closures would be undertaken after further analysis of the data and consultation with the HMS and Billfish Advisory Panels (APs). NMFS held a combined meeting of the HMS and Billfish APs on June 10–11, 1999, to discuss possible alternatives for a proposed rule under the framework provisions of the HMS FMP. At the AP meeting, presentations were provided by members of the APs, or their representatives, and by the HMS Division on various time-area strategies.

The AP members were generally supportive of the time-area management strategy, and asked NMFS at the conclusion of the meeting to develop a written document outlining all analytical methods and results of the time-area evaluation. The APs also provided several comments on temporal and/or spatial components that NMFS should consider further in its analyses. The AP's comments and suggestions were included in the development of a draft Technical Memorandum, which was made available to the public on November 2, 1999 (64 FR 59162).

Legal Challenge to FMPs

After issuance of the final regulations to implement the HMS FMP and Billfish FMP Amendment, the National Coalition for Marine Conservation and several other groups filed suit in U.S. District Court for the District of Columbia challenging the bycatch and rebuilding provisions. Plaintiffs asked the Court to enter a declaratory judgment that NMFS violated the Magnuson-Stevens Act and the APA and to ''order the defendants, as expeditiously as possible and by a date certain, (1) to evaluate adequately the practicability of conservation and management measures that could minimize highly migratory species bycatch; (2) to require practicable conservation and management measures that minimize highly migratory species bycatch; (3) to establish an adequate bycatch reporting methodology; and (4) to set forth conservation and management measures to rebuild the blue and white marlin fisheries.'' In a negotiated stay of the proceedings of the suit, NMFS committed to publishing a proposed rule on or by December 15, 1999, to address bycatch of billfish and undersized swordfish.

Marine Mammal Protection Act (MMPA)

Under procedures established by the MMPA, the Atlantic pelagic longline fishery has been listed as a Category I fishery due to the frequency of incidental mortality and serious injury to marine mammals (predominantly pilot whales which are considered a strategic stock). Based on 1991 through 1995 observer data (the most recent data considered for this listing), pelagic longline gear hooked 14 different species of marine mammals.

In 1994, the MMPA was reauthorized, establishing the Take Reduction Team framework. The Atlantic Offshore Cetacean Take Reduction Team (AOCTRT) was formed in May 1996 to address protected species bycatch by the Category I Atlantic pelagic fisheries (i.e., driftnet, longline, and pair trawl fisheries that target highly migratory species). Observer data collected since 1991 considered by the AOCTRT indicate that marine mammal interaction rates are high in the pelagic longline fishery and that effort has expanded since 1985.

The take reduction plan was submitted to NMFS in November, 1996. In accordance with section 118(f) of the MMPA, that plan contained measures to address the bycatch of strategic stocks of marine mammals. The consensus plan recommended a broad range of regulatory and non-regulatory bycatch reduction measures, including, but not limited to, gear modifications, time-area closures and educational workshops. NMFS implemented some of these proposed measures in the HMS FMP (e.g., limiting the length of pelagic longlines in the Mid-Atlantic Bight, requiring vessels to move after an interaction with a protected species). In the final HMS FMP, NMFS noted that additional reductions in takes of marine mammals could occur with closures of certain fishing areas during times of high interaction rates.

Endangered Species Act (ESA)

Loggerhead sea turtles are considered threatened under the ESA, and leatherback and Kemp's Ridley sea turtles are considered endangered. The Atlantic pelagic longline fishery interacts with all of these species. On April 23, 1999, NMFS concluded that the pelagic longline fishery may adversely affect, but is not likely to jeopardize the continued existence of any endangered or threatened species under NMFS jurisdiction. On the approximately 5 percent of trips with at-sea observers from 1993 through 1997, a total of 470 sea turtles was observed caught by pelagic longline fishermen. Although most turtles were released alive, NMFS remains concerned about serious injuries of turtles hooked on pelagic longline gear.

NMFS has responded to requirements under the ESA by implementing the terms and conditions of the Biological Opinion and Incidental Take Statement for the pelagic longline fishery. NMFS selects a target of 5 percent of pelagic longline trips for observer coverage, records information on the condition of sea turtles and marine mammals when released on observed trips, and supports research on turtle capture rates as they relate to hook types. NMFS continues to hold educational workshops for pelagic longline fishermen and has distributed turtle and marine mammal handling instructions in an attempt to increase the survival of protected species through education on proper release techniques.

To the extent that turtle interactions occur at higher rates in certain fishing areas at particular times, time-area closures for pelagic longline fishing could increase or reduce turtle takes. NMFS, therefore, considered the

potential impacts of alternative closed areas on the expected rates of turtle interactions. In addition, NMFS considered gear/fishing modifications that might further reduce turtles takes.

Bycatch Reduction Alternatives

NMFS considered three alternative actions to reduce bycatch and/or bycatch mortality in the Atlantic HMS pelagic longline fishery: status quo, gear modifications that would decrease hook-ups and/or increase survival of bycatch species, and prohibiting longline fishing in areas of high bycatch or incidental catch rates. NMFS considered gear modifications beyond those examined during development of the HMS FMP. NMFS also considered a broad range of closures, both in terms of area and time.

NMFS rejected the status quo because NMFS is required to minimize bycatch and bycatch mortality under the Magnuson-Stevens Act to the extent practicable. And, although NMFS, under the Endangered Species Act and the Marine Mammal Protection Act, has been working with fishermen to decrease interactions with endangered sea turtles and strategic stocks of marine mammals and to increase chances of survival for these animals when released from longline gear, NMFS has determined that further action to reduce bycatch mortality is needed. While this proposed rule is not intended to directly address bycatch mortality of protected species, NMFS has carefully analyzed the alternatives to ensure that the impacts on protected species would be minimized.

Gear Modifications

NMFS considered various gear modifications, including the restriction on the use of live bait, modifications to hook spacing on the mainline, a requirement to use circle hooks, and limitations on soak time or timing/placement of gear. Although experience with these gear modifications indicates possible reductions in bycatch and/or bycatch mortality, data are insufficient to conclude that gear modifications alone would adequately meet the objective of reduced mortality for all of the species of concern. Given the increased fishing costs and enforcement issues associated with some of these alternatives, NMFS has rejected gear modifications at this time and prefers to assess the effectiveness of time-area closures while continuing to conduct and support gear research.

Effort Reduction

NMFS rejected the banning all pelagic longline fishing by U.S. vessels because of the significant adverse economic impact on fishermen, support services and seafood dealers, and increased costs to consumers. Additionally, a ban on longlining might preclude full harvest of the U.S. swordfish quota, and as such, would be inconsistent with legal requirements that do not allow for regulations that have the effect of decreasing an ICCAT quota or that do not provide fishermen with a reasonable opportunity to harvest an ICCAT quota. NMFS prefers instead to restrict pelagic longline fishing in areas where bycatch and incidental catch rates are the highest and thus still allow for pelagic longlining in other areas.

However, even with these proposed time-area closures to reduce bycatch rates, NMFS may need to consider future reductions of pelagic longline effort to meet bycatch reduction and stock rebuilding goals for all affected species. While reductions in the pelagic longline fleet have been achieved with the limited access program implemented by the HMS FMP, further reductions could be achieved through attrition of current limited access permits, landings criteria for renewal of permits, or a vessel buy back program. NMFS has not included any of these measures in this rulemaking. However, NMFS is aware of three legislative proposals recently introduced in the 106th Congress (S1911, H.R. 3331, and H.R. 3390) to reduce bycatch and overall effort in the longline fleet. Specifically, each of these bills appears to provide conservation benefits to highly migratory and other fish species, to reduce negative fishing interactions between the longline and recreational fishermen, and to reduce the number of longline fishing vessels through a buy back program. The agency finds these objectives laudable.

Evaluation of Closed Areas

NMFS considered a number of factors when examining time-area closures as a means of reducing bycatch. In assessing the effects of closures, NMFS established three objectives: (1) to maximize the reduction in the incidental catch of billfish and of swordfish less than 33 lb (15 kg) dressed weight; (2) to minimize the reduction in the target catch of swordfish and other marketable species; and (3) to ensure that the incidental catch of other species (e.g., bluefin tuna, mammals, turtles) either remains unchanged or is reduced. It was recognized that all three objectives might not be met to the maximum extent and that conflicting outcomes would require some balancing of the objectives.

NMFS analyzed a wide range of areas to evaluate the effect of closures on bycatch rates. After consultation with the AP, NMFS focused on combinations of Gulf of Mexico and South Atlantic Bight areas that would most closely meet the bycatch reduction objectives. The South Atlantic Bight was targeted because in recent years a high percentage of the swordfish hooked in that area were undersized and were discarded. The Gulf of Mexico area was investigated initially as an area of high marlin bycatch. Preliminary analyses were made available to the AP members and to the general public in the draft Technical Memorandum (see **ADDRESSES**).

Based on catch and bycatch data reported in vessel logbooks, NMFS constructed several potential closed areas of differing sizes both in the Gulf of Mexico and in the South Atlantic Bight. The delineation of the areas and a summary of reported catch and effort in each area are contained in the draft SEIS (see **ADDRESSES**) and are not repeated here. Assuming an area would be closed, NMFS first estimated the target catch and bycatch that would not occur during the time of the closure based on average catch rates reported in vessel logbooks over the period from 1995 to 1997. However, it is realistic to assume that the effort (longline sets) normally expended in the potential closed area would be redistributed elsewhere. Therefore, in analyzing the degree to which various time-area closures achieve the objectives, it was necessary to consider effort redistribution. The results of the analysis under the ''no-redistribution'' and ''redistribution of effort'' models are described at length in the draft Technical Memorandum and Draft SEIS (see **ADDRESSES**) and are not repeated here.

After analyzing the net effects on catch and bycatch, NMFS is proposing to close a mid-sized area in South Atlantic Bight (generally between 24°00' N. lat. and 34°00' N. lat. and within 76°00' W. long and 82°00' W. long.) during January through December and a mid-sized area in the Gulf of Mexico (north of 26°00' N. lat. and west of 90°00' W. long.) during March through September. The use of pelagic longline gear by U.S. commercial fishermen that target HMS (those vessels with HMS permits) would be eliminated in approximately 99,810 square miles of ocean by the South Atlantic closure and and 96,560 square miles of ocean by the Gulf of Mexico closure. Under the assumption of no-effort redistribution, NMFS estimates reductions of incidental catch and bycatch as follows:

40 percent for swordfish discards; 22 percent for blue marlin discards; 20 percent for white marlin discards; 40 percent for sailfish discards; 60 percent for bluefin tuna discards; 4 percent for pelagic sharks discards; 46 percent for large coastal sharks discards; and 5 percent for sea turtles. Without shifting fishing effort that would otherwise be applied in the closed areas, landings of target and marketable incidental catch would be reduced, including: swordfish, 24 percent; bigeye, albacore, yellowfin, and skipjack (BAYS) tunas, 17 percent; dolphin, 59 percent, pelagic sharks, 12 percent; and large coastal sharks, 37 percent.

Under one assumption of redistribution of effort for the same closure, NMFS estimates that reductions in bycatch and incidental catches would be 22 percent for swordfish discards and 49 percent for bluefin tuna discards. Incidental landings of dolphin would be reduced by 34 percent under this closure alternative, and swordfish would be reduced by 6 percent, but landings would increase by 6 percent for pelagic sharks landings and 9 percent for BAYS tunas. The bycatch of sea turtles would also increase by almost 8 percent under the effort redistribution scenario. NMFS expects that at least some fishing effort would be shifted to open areas and, therefore, considers the redistribution model to be the more realistic outcome.

Although a reduction of 10 percent is estimated for sailfish, discards of other Atlantic billfish would increase if effort is redistributed at random from the closed area: 5 percent for blue marlin; 6 percent for white marlin. However, the random effort redistribution model does not account for the generally smaller size of vessels that currently fish off the southeast U.S. Atlantic coast and it is unlikely that these vessels would be redistributed into the open Caribbean or southwest Atlantic Ocean where blue marlin, white marlin, and sailfish discard rates generally increase. Therefore, the impact of effort redistribution on Atlantic billfish discards is probably overestimated. However, NMFS will continue to assess reduced or alternative closed areas that would more effectively decrease billfish discard rates overall and minimize displacement of vessels into areas where billfish discard rates are higher.

Effort redistributed to the Mid-Atlantic Bight area is likely to encounter more mammals and turtles than if those longline sets were made in the closed areas. Similarly, sets redistributed to the northeast areas might encounter more sea turtles than if the sets were made in the areas proposed for closure. However, the projected increases in turtle takes under a random effort redistribution scenario result from vessels affected by the closures shifting trips to the Grand Banks, an area of high turtle takes. Movement of most of these vessels to the Grand Banks is an unlikely scenario due to the smaller size of the vessels with home ports in the proposed areas. These smaller vessels are not outfitted for distant water trips and would more likely shift effort to adjacent coastal areas where turtle takes are less frequent. In addition, it is not certain that the limited number of larger vessels could necessarily increase effort to a significant degree in the Grand Banks area as the fishing season is restricted in duration by weather and availability of swordfish.

In considering the impacts of area closures, it is recognized that larger closed areas in the Gulf and South Atlantic could cause effort to shift to areas with greater turtle takes (Grand Banks) and billfish bycatch (Caribbean Sea). Conversely, smaller closed areas would not shift as much fishing effort away from areas where bluefin tuna and undersized swordfish interactions are problems. On balance, NMFS is proposing a mid-size closed area to avoid the areas of highest interactions with some species of concern while still affording fishermen an opportunity to fish in areas that are closer to normal operations and that do not inordinately increase takes of other species of concern. NMFS requests comments specifically on how the boundaries and size of the closed areas could be modified to mitigate the impacts on turtles as well as billfish.

The time-area closures in this proposed rule differ from those in the bills before Congress referenced above. However, different closed areas could be considered as further analysis of current catch, bycatch and incidental catch rates helps to pinpoint problem areas or as the effects of gear modifications or potential vessel buyouts are determined to result in reduced interactions. For example, the NMFS proposal includes more of the ''Charleston Bump'' area in an attempt to address concerns that juvenile swordfish fish move in and out of that area associated with oceanographic conditions. Closure of an area encompassing at least part of the ''Charleston Bump'' would enhance bycatch reduction.

NMFS specifically requests public comment on whether the size and boundaries of the various closed areas will accomplish the bycatch reduction goals. Under the no-displacement model, NMFS estimates that the proposed time-area closure would result in a decrease in gross exvessel revenues of up to $14 million and approximately 20 percent of the vessel operators would lose half of their gross income. Recognizing the significant economic impacts of this proposed rule, NMFS also seeks comments on how to mitigate those impacts, including the need for a vessel buyout program, as suggested in the legislative proposals.

Facilitation of Enforcement

In implementing the time-area closures, NMFS has concerns about the potential for expanded pelagic longline fishing effort despite having limited access to the shark, swordfish, and tuna fisheries, due to increased interest in targeting dolphin and wahoo with this gear. Dolphin and wahoo are under the management authority of the South Atlantic, Gulf of Mexico and Caribbean Fishery Management Councils. Based on logbook reports indicating a limited amount of directed effort (less than 10 percent of pelagic longline sets in 1988), targeted pelagic longline fishing for wahoo and dolphin in the proposed closed areas would result in similar bycatch rates of undersized swordfish, billfish, and sea turtles. Because these vessels targeting wahoo and dolphin might not have HMS permits, such pelagic longline effort could lead to increased regulatory discards of tunas and legal-sized swordfish.

NMFS, therefore, proposes that vessels issued HMS permits be allowed to retain HMS in the closed areas only if transiting the closed areas with an operating VMS, or if fishing in the closed areas with gear other than pelagic longlines. This would reduce the incentive for HMS-permitted vessels to target other species with pelagic longline gear if incidental catch of HMS cannot be retained. NMFS has requested that the Fishery Management Councils review this proposed rule and assess the implications of the directed pelagic longline fishery for dolphin and wahoo on the proposed bycatch reduction measures. The Councils may wish to consider complementary actions to enhance the bycatch reduction afforded by this proposed rule.

NMFS analyzed economic impacts to all swordfish limited-access permit holders (includes all tuna and swordfish fishermen using longline gear) who reported pelagic longline effort in 1997, regardless of their target species. NMFS requests comments on the economic impacts of these proposed measures on vessels that do not currently hold tuna or swordfish limited-access permits and that may otherwise have targeted dolphin and wahoo in the proposed closed areas.

Time-area closures provide NMFS with an effective tool to reduce bycatch while still allowing fishermen to pursue HMS in other areas or HMS and other species in these closed areas with other authorized fishing gears. Given the high costs to NMFS of 100–percent observer coverage, NMFS requires vessel monitoring systems (VMS) on all vessels that have pelagic longline gear on board as of June 1, 2000. VMS will be used to assist in enforcing closed areas. NMFS proposes that pelagic longline vessels be allowed to transit the proposed closed areas with HMS on board provided the VMS is operating consistent with existing regulations at 50 CFR 635.69.

In order to effectively enforce the closed areas for vessels issued swordfish and shark permits, NMFS must consider the impacts of pelagic longline fishing activities in all waters, regardless of whether conducted within or beyond the boundaries of the EEZ. In the consolidated regulations issued to implement the HMS FMP (64 FR 29090, May 28, 1999), NMFS established a condition of issuing a shark permit to a qualifying vessel such that persons aboard the vessel would be subject to Federal shark regulations regardless of where the fishing activity occurs. Similarly, NMFS now proposes that the same condition apply to the issuance of a swordfish permit. If this provision is implemented, the fishing, catch and gear requirements of this part with respect to swordfish would apply to person aboard permitted vessels within the EEZ, landward of the EEZ, or outside the EEZ. As swordfish limited access permits have already been issued without such condition, NMFS solicits comment from those permit holders on the need for, and consequences of, future attachment of this condition.

Conclusions

NMFS proposes to prohibit pelagic longline fishing in areas with relatively higher bycatch rates because this alternative would best address the conservation and management objectives described above. Should future research indicate that practicable gear modifications would reduce bycatch in a comparable manner, NMFS will consider those gear modifications in conjunction with, or as an alternative to, time-area closures. The preferred alternative appropriately meets the objectives of the Magnuson-Stevens Act and has the greatest likelihood of reducing bycatch while minimizing, to the extent pos sible, adverse impacts on fishing revenues and costs.

NMFS notes that there are similarities between the time-area closures for pelagic longline gear contained in this proposed rule and those contained in legislation pending before Congress. There are also significant differences, however, particularly in the longer closed period for the Gulf of Mexico. NMFS recognizes that there may be a rational basis for modifying the time-area closures proposed in this rule in order to alleviate some biological, social, or economic impacts for which limited information was available at the time of developing this rule. Therefore, NMFS is specifically soliciting public comment and scientific information on such modifications.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and ATCA, 16 U.S.C. 971 *et seq.*

NMFS has concluded that this proposed rule to prohibit pelagic longline fishing in the closed areas would have a significant economic impact on a substantial number of small entities. Accordingly, an initial regulatory flexibility analysis has been prepared.

The initial regulatory flexibility analysis assumes that fishermen, during the time they would otherwise be pelagic longline fishing in the designated areas would instead: (1) make longline sets in other areas, (2) participate in other commercial fisheries, or (3) exit commercial fishing. As of October 28, 1999, there were 443 directed and incidental swordfish permit holders under the limited access system. This number probably represents the number of active pelagic longline vessels since most pelagic longline fishermen land swordfish along with other species. Under the preferred alternative, each of the above scenarios results in greater than a 5–percent decrease in gross revenues for more than 20 percent of the affected entities, or would cause greater than 2 percent of the affected entities to be forced to cease operations.

The other alternatives considered include the status quo, gear modifications, and a ban on pelagic longline fishing by U.S. vessels in the Atlantic Ocean. Although the status quo and gear modification alternatives might have lesser economic impacts on participants in the pelagic longline fishery, those alternatives either do not reduce bycatch to the extent that NMFS expects to be achieved by the time-area closures or present enforcement difficulties. While a complete ban on longline fishing would reduce bycatch to a greater extent than the proposed time-area closures, the lost value of commercial seafood products and the adverse impacts on fishery participants and fishing communities would impose greater costs than the proposed action. The RIR/IRFA provides further discussion of the economic effects of all the alternatives considered.

The proposed action would not impose any additional reporting or recordkeeping requirements on vessel operators or dealers. Vessel logbooks, dealer reports, observer notification, and VMS requirements applicable to the HMS fisheries are all currently approved by the Office of Management and Budget under existing regulations.

NMFS reinitiated formal consultation for all Highly Migratory Species commercial fisheries on May 12, 1998, under section 7 of the ESA. In a Biological Opinion issued on April 23, 1999, NMFS concluded that operation of the Atlantic pelagic longline fishery may adversely affect, but is not likely to jeopardize, the continued existence of any endangered or threatened species under NMFS' jurisdiction. While this proposed rule, if implemented, would eliminate interactions between pelagic longline fishermen and endangered sea turtles in the closed areas, the overall effect on interaction rates will depend on fishermen's responses to the closures in terms of shifting pelagic longline effort or fishing for other species with other gear. NMFS is concerned that turtle takes could increase under certain scenarios of effort displacement and has reinitiated consultation under section 7 of the ESA.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: December 10, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635, is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

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

2. In § 635.2, the definition of ''high-flyer'' is revised and new definitions for ''Gulf of Mexico closed area'' and ''Southeastern United States closed

area'' are added in alphabetical order to read as follows:

§ 635.2 Definitions.

* * * * *

Gulf of Mexico closed area means the Atlantic Ocean area shoreward of the outer boundary of the EEZ that is both north of 26°00' N. lat. and west of 90°00' W. long.

* * * * *

High-flyer means a flag, radar reflector or radio beacon transmitter, suitable for attachment to a longline to facilitate its location and retrieval.

* * * * *

Southeastern United States closed area means the Atlantic Ocean area seaward of the baseline from which the territorial sea is measured and shoreward of the outer boundary of the EEZ from a point intersecting the coast at 34°00' N. lat. near Wilmington Beach, North Carolina and proceeding due east to connect by straight lines the following coordinates in the order stated: 34°00' N. lat., 76°00' W. long.; 31°00' N. lat., 76°00' W. long.; 31°00' N. lat., 78°00' W. long.; 28°17' N. lat., 79°00' W. long.; then proceeding along the boundary of the EEZ to 24°00' N. lat., 81°50' W. long.; then proceeding due north to intersect the coast near Key West, Florida.

* * * * *

3. In § 635.4, paragraph (a)(10) is added, and paragraph(e)(4) is removed, to read as follows:

§ 635.4 Permits and fees.

* * * * *

(a) * * *

(10) *Permit condition.* An owner issued a swordfish or shark permit pursuant to this part must agree, as a condition of such permit, that the vessel's swordfish or shark fishing, catch and gear are subject to the requirements of this part during the period of validity of the permit, without regard to whether such fishing occurs in the EEZ, or outside the EEZ, and without regard to where such swordfish or shark, or gear are possessed, taken or landed. However, when a vessel fishes within the waters of a state that has more restrictive regulations on swordfish or shark fishing, persons aboard the vessel must abide by the state's more restrictive regulations.

4. In § 635.21, the first sentence of paragraph (c) is removed and paragraph(c)(2) is revised to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(c) *Pelagic longlines.* * * *

(2) A pelagic longline may not be fished or deployed from a vessel issued a permit under this part in the Northeastern United States closed area from June 1 through June 30 each calendar year, in the Gulf of Mexico closed area from March 1 through September 30 each calendar year, or in the Southeastern United States closed area at any time.

* * * * *

5. In § 635.69 (which will be effective June 1, 2000), paragraph (a) is amended by adding a second and third sentence to read as follows:

§ 635.69 Vessel monitoring systems.

(a) *Applicability.* *** A vessel is considered to have pelagic longline gear on board when a power-operated longline hauler, hi-flyers/floats, and gangions are on board. Removal of any one of these three elements constitutes removal of pelagic longline gear.

* * * * *

6. In § 635.71, paragraph (a)(30) is added to read as follows:

§ 635.71 Prohibitions.

* * * * *

(30) Deploy or fish with a pelagic longline greater than the maximum length or in any closed area as specified at § 635.21(c)(1) or (2).

[FR Doc. 99–32588 Filed 12–13–99; 11:53 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 64, No. 240

Wednesday, December 15, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

AGENCY: Natural Resources Conservation Service (NRCS) USDA.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Indiana for review and comment.

SUMMARY: It is the intention of NRCS in Indiana to issue a new and a revised conservation practice standard in Section IV of the FOTG. The new standard is Manure Transfer (Code 634) and the revised practice standard is Waste Management System (Code 312). These practices may be used in conservation systems that treat highly erodible land.

DATES: Comments will be received on or before January 14, 2000.

ADDRESSES: Address all requests and comments to Robert L. Eddleman, State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of these standards will be made available upon written request. You may submit electronic requests and comments to joe.gasperi@in.usda.gov

FOR FURTHER INFORMATION CONTACT: Robert L. Eddleman, 317–290–3200.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

Dated: December 2, 1999.

Robert L. Eddleman,

State Conservationist, Indianapolis, Indiana.

[FR Doc. 99–32450 Filed 12–14–99; 8:45 am]

BILLING CODE 3410–16–U

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 64–99]

Proposed Foreign-Trade Zone—Riverside County, California Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the March Joint Powers Authority (a public corporation), to establish a general-purpose foreign-trade zone in Riverside County, California, adjacent to Los Angeles-Long Beach Customs port of entry. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 6, 1999. The applicant is authorized to make the proposal under Section 6302 of the California Code.

The proposed zone would be the fourth general-purpose zone in the Los Angeles-Long Beach Customs port of entry area. The existing zones are **FTZ 50** in Long Beach (sites also in Ontario, Santa Ana and San Bernardino) (Grantee: Board of Harbor Commissioners of the City of Long Beach, Board Order 147, 44 FR 55919, 9/28/79); **FTZ 191** in Palmdale (Grantee: City of Palmdale, Board Order 628, 58 FR 6614, 2/1/93); and, **FTZ 202** in Los Angeles (sites also in Bakersfield, Rancho Dominguez and Carson) (Grantee: Board of Harbor Commissioners of the City of Los Angeles, Board Order 693, 59 FR 37464, 7/22/94).

The proposed new zone (2,480 acres) would be located at the March Inland Port (MIP), which is related to a defense conversion project at March Air Force Base. The site is located within Riverside County, California, and straddles Interstate 215 a few miles south of State Highway 60. The MIP development, consisting of over 7,000 acres of land, adjacent to the Cities of Moreno Valley, Perris and Riverside, is a newly-established civilian airport and air-cargo facility at the realigned March Air Force Base. The base now serves as an Air Reserve Base, and surplus lands are being made available for commercial uses. MIP is a ''joint-use airport,'' where airport facilities are owned and operated by the Air Force but made available for civilian aviation. The area to be included in the proposed zone is currently owned by the U.S. Air Force, but ownership is in the process of being conveyed to the applicant for commercial use. The application indicates a need for zone services in the Riverside County area. Several firms have indicated an interest in using zone procedures for warehousing/distribution activity. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on February 4, 2000, 10:00 a.m., at the March Joint Powers Authority Auditorium, 3409 Bundy Avenue, Riverside, California 92518.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 22, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to March 8, 2000).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Office of the March Joint Powers Authority, 3430 Bundy Avenue, Suite 107, Building 3408, March AFB, California 92518.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: December 8, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–32512 Filed 12–14–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080999E]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Pelagic *Sargassum* Habitat in the South Atlantic; Fishery Management Plan

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

ACTION: Notice of agency action.

SUMMARY: NMFS has disapproved the Fishery Management Plan for Pelagic *Sargassum* Habitat of the South Atlantic Region (FMP) submitted by the South Atlantic Fishery Management Council (Council). Under the procedures of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), NMFS determined that the FMP did not meet the requirements for a fishery management plan.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, telephone: 727–570–5305, fax: 727–570–5583, e-mail: steve.branstetter@noaa.gov.

SUPPLEMENTARY INFORMATION: Pelagic *Sargassum* is an abundant brown alga that occurs near the surface in warm waters of the western North Atlantic. According to the FMP, the standing crop of pelagic *Sargassum* in the North Atlantic Ocean may be 4 to 11 million metric tons (roughly 9 to 24 billion lb). Two different scientific studies indicate that *Sargassum* is capable of increasing its biomass by approximately 50 percent per week. The *Sargassum* habitat supports a diverse assemblage of marine organisms. The Council designated pelagic *Sargassum* as essential fish habitat (EFH) and as an essential fish habitat-habitat area of particular concern (EFH-HAPC) for snapper-grouper species and coastal migratory pelagic species in its Comprehensive Amendment Addressing Essential Fish Habitat in Fishery Management Plans of the South Atlantic Region (Habitat Plan).

The Council subsequently developed and submitted the FMP that addresses conservation and management of pelagic *Sargassum* off the U.S. Atlantic coast from the North Carolina/Virginia boundary through the east coast of Florida, including the Atlantic side of the Florida Keys. The FMP would have: (1) Established the management unit for *Sargassum*; (2) specified optimum yield (OY) for pelagic *Sargassum* as zero harvest; (3) specified overfishing levels as occurring when the fishing mortality rate is greater than zero; (4) identified EFH for *Sargassum*; (5) established EFH-HAPCs for *Sargassum*; and (6) eventually prohibited the harvest or possession of pelagic *Sargassum* in or from the exclusive economic zone off the southern Atlantic states.

The FMP did not specify a maximum sustainable yield (MSY) for pelagic *Sargassum*. Section 303(a)(3) of the Magnuson-Stevens Act requires that any fishery management plan ''assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification.'' As such, MSY is a necessary FMP component, upon which other FMP measures such as an MSY control rule, as specified in NMFS guidelines (see 50 CFR 600.310), would depend. NMFS specifically invited comments on this aspect of the FMP and on the propriety of the control rule measures such as an OY specification of zero in the absence of any specification of MSY. Four comments indicated that the establishment of MSY was irrelevant for habitat, and three comments indirectly addressed this issue noting that research should be conducted to develop a scientifically credible management strategy.

One company has harvested a total of 448,000 lb (203,209 kg) of pelagic *Sargassum* off the southern Atlantic states from 1976 to the present. This harvest represents an average annual removal of less than 20,000 lb (9072 kg), which is 0.0002 to 0.00008 percent of the estimated standing crop. Nevertheless, the Council concluded that any removal of pelagic *Sargassum* constituted a net loss of EFH off the southern Atlantic states, and, thus, was contradictory to the goals and objectives of the Council's Habitat Plan; therefore, the Council set OY equal to zero harvest. Section 303(a)(7) of the Magnuson-Stevens Act requires the Councils to minimize, to the extent practicable, adverse effects on EFH caused by fishing.

Based on the biological information available concerning the standing crop and productivity of pelagic *Sargassum*, NMFS determined that the FMP did not provide sufficient rationale that the historical harvest had adversely impacted *Sargassum* EFH or the fauna associated with *Sargassum* EFH.

Based on the FMP's lack of an MSY estimate for pelagic *Sargassum* and its failure to justify adequately an OY of zero, NMFS disapproved the FMP. Nevertheless, NMFS supports the Council's intent to maintain a healthy quantity of pelagic *Sargassum* habitat for numerous managed and non-managed species, including threatened, endangered, or otherwise protected species. NMFS has suggested that the Council develop an alternative management mechanism, such as an amendment to an existing FMP where *Sargassum* is designated as EFH, that would effectively manage and maintain sustainable quantities of this renewable natural resource.

Comments and Responses

Comments were received from 304 individuals, 9 sport fishing organizations, 17 environmental or citizens groups, 4 businesses, 4 state agencies, 4 Federal agencies, and the Council.

Comment 1: In response to NMFS' specific request for comments on the appropriateness of an FMP that did not contain an estimate of MSY, several commenters questioned the relevance of MSY to a recognized essential habitat, pointing out that the biomass is less important than its spatial and temporal distribution. These commenters believed that OY could be set at zero to provide the overall greatest benefit to society when considering ecosystem integrity and protection. Also, commenters noted that there was a precedent for setting OY equal to zero harvest since a similar management strategy was employed for organisms/habitat such as coral and live rock managed under other fishery management plans.

Another commenter stated that the FMP did not provide sufficient rationale to support an OY of zero harvest, and recommended that, given the lack of fishing thresholds and targets, the goals and objectives of the FMP would be better accomplished by establishing *Sargassum* as EFH under existing FMPs instead of attempting to develop all the requirements for a separate FMP. Commenters also addressed this issue indirectly, noting that data were insufficient to calculate control rule parameters and that research should be conducted to provide answers to key questions concerning the *Sargassum* ecosystem structure so that a scientifically credible management strategy could be established.

Response: NMFS recognizes the importance of *Sargassum* habitat to the offshore pelagic community. NMFS approved the Council's Habitat Plan, which designated *Sargassum* as EFH for snapper-grouper and coastal migratory species. Nevertheless, the Council, in developing an FMP, is treating *Sargassum* habitat as a fishery resource. MSY is a necessary component of an FMP; thus NMFS determined that the FMP, as submitted by the Council, was inconsistent with the Magnuson-Stevens Act because it failed to specify MSY, and disapproved it. NMFS agrees that alternative management actions, other than an FMP, could be proposed to address the resource conservation issues.

Analogies between coral/live rock EFH and *Sargassum* as EFH are inapposite for purposes of determining the appropriate level of protection. Coral and organisms that create live rock are slow growing, and, in some instances, such growth is not renewable; harvest of some of these organisms permanently damages or destroys that particular coral colony and/or reef structure. Additionally, the Council allows the harvest of octocorals, which would comprise part of the coral habitats designated as EFH. By contrast, *Sargassum* is prolific and capable of generating its own biomass in a few weeks. *Sargassum* would be more appropriately compared to other faster growing organisms that create habitat, such as oysters. Oyster reefs have been designated as EFH and as EFH-HAPC for penaeid shrimp, red drum, snapper-grouper, and coastal migratory pelagic fish management units, yet these reefs are extensively harvested. Section 303(a)(7) of the Magnuson-Stevens Act requires that all fishery management councils minimize to the extent practicable adverse effects on EFH caused by fishing, but clearly this does not, in every instance, preclude recoverable impacts to EFH due to fishing efforts.

Comment 2: A total of 311 commenters supported the implementation of the FMP, which would prohibit the harvest of *Sargassum*. These comments noted that *Sargassum* is an important habitat for numerous species of fishes and invertebrates, as well as endangered and threatened sea turtles and protected sea birds. An additional 25 comments simply expressed concern that, without management, exploitation of the resource would increase, which could lead to destruction of habitat. Several comments indicated support for the proposed FMP because its implementation would designate *Sargassum* as EFH.

The Environmental Protection Agency provided a separate comment on the Final Environmental Impact Statement (FEIS) pursuant to sections 102(2)(C) of the National Environmental Policy Act and to section 309 of the Clean Air Act. The Council also commented on the FEIS. Both supported the proposed suspension of the *Sargassum* fishery.

Response: NMFS agrees that *Sargassum* is an important EFH. On June 3, 1999, NMFS approved the Council's Habitat Plan, which designated *Sargassum* as EFH for several fish species. NMFS intends to ensure that healthy quantities of pelagic *Sargassum* habitat are maintained for numerous managed and non-managed species, including threatened, endangered, or otherwise protected species.

NMFS disagrees that a total prohibition of harvest is necessary to protect, conserve, and enhance the abundance of this prolific renewable natural resource or to protect the fauna comprising the *Sargassum* habitat community. According to the FMP, the standing crop of pelagic *Sargassum* in the North Atlantic Ocean may be 9 to 24 billion lb (4 to 11 million metric tons), and two different scientific studies indicate that *Sargassum* is capable of increasing its biomass between 10 and 100 percent per week. The average annual harvest of *Sargassum* is approximately 20,000 lb (9072 kg). This harvest represents only 0.0002 to 0.00008 percent of the estimated standing crop. Based on the biological information available concerning the standing crop and productivity of pelagic *Sargassum*, NMFS determined that the FMP did not adequately justify zero harvest as necessary to effectively conserve and maintain this important renewable natural resource (see also the Response to Comment 1).

NMFS has suggested to the Council several less restrictive management options that would allow the continued, but restricted, harvest of *Sargassum*, while ensuring minimal impacts to the habitat and the fauna associated with the *Sargassum* habitat, including the use of an on-board observer.

Comment 3: Three commenters opposed the prohibition of *Sargassum* harvest. One commenter pointed out that oyster reefs provide EFH for a multitude of marine species, but that the oysters comprising these reefs are harvested intensively. All three comments noted that the current harvest level is minimal compared with the existing standing crop of *Sargassum*.

Response: NMFS agrees that the designation of a particular habitat as EFH does not preclude the continued use of that habitat. NMFS disagrees with the Council's position that any removal of pelagic *Sargassum* represents a net loss of EFH and thus is contradictory to the goals and objectives of the Council's Comprehensive Habitat Plan for the South Atlantic Region or to the Magnuson-Stevens Act. That position is inconsistent with other designations of EFH and EFH-HAPC in the Council's Habitat Plan. The Council allows the harvest of octocorals, which are part of the overall coral complex designated as EFH. Oyster reefs and shell hash areas are designated as EFH and as EFH-HAPC for penaeid shrimp, red drum, snapper-grouper, and coastal migratory pelagic fish management units, and these reefs are extensively harvested. Section 303(a)(7) of the Magnuson-Stevens Act requires that the Councils minimize to the extent practicable adverse effects on EFH caused by fishing, but clearly this does not, in every instance, preclude recoverable impacts to EFH due to fishing efforts.

Comment 4: One environmental group stated that NMFS had caused unacceptable delays in promulgating regulations related to this FMP; NMFS did not publish the Notice of Availability (NOA) of the FMP ''immediately'' within 5 days of receipt of the FMP, nor did NMFS publish a proposed rule to promulgate the actions outlined in the FMP for public comment.

Response: An FMP or amendment is not deemed to be transmitted from the Council to the Secretary until it is complete, including any necessary regulations and supporting analyses. Additionally, NMFS may not publish the proposed regulations for public comment if the proposed regulations are determined, subsequent to transmittal, to be inconsistent with the FMP or amendment, the Magnuson-Stevens Act, or other applicable law.

Comment 5: One environmental organization stated that the wording in the NOA and in the letter to the Council returning the proposed regulations indicated that NMFS intended to disapprove the FMP prior to receiving and fairly considering public comment.

Response: Section 303(a)(3) mandates that an FMP must assess and specify the present and probable future condition of the fishery and the MSY and OY from the fishery. As such, MSY is a necessary component of an FMP. Therefore, in the NOA, NMFS specifically requested public comment on the FMP's lack of an MSY and the propriety of control rule measures such as an OY specification of

zero in the absence of any specification of MSY. NMFS disagrees that by requesting such comment, it prejudiced the results of the NOA.

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

Dated: December 8, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–32318 Filed 12–14–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in the Philippines

December 10, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: December 15, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 345, which is currently closed, is being increased for special carryforward, which will re-open the limit.

To the extent this special carryforward is used, it will be charged against the 2000 specific limit at a ratio of 1.5 to 1.

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 63 FR 71096, published on December 23, 1998). Also see 63 FR 67050, published on December 4, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 10, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 30, 1998, 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 the Philippines and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on December 15, 1999, you are directed to increase the limit for Cateogry 345 to 244,200 dozen [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing:

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to 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. 99–32479 Filed 12–14–99; 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 the Philippines

December 10, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: December 15, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for special carryforward.

To the extent this special carryforward is used, it will be charged against the 2000 specific limits at a ratio of 1.5 to 1.

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 63 FR 71096, published on December 23, 1998). Also see 63 FR 67050, published on December 4, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 10, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 30, 1998, 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 the Philippines and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on December 15, 1999, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
638/639	2,519,377 dozen.
647/648	1,494,547 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

[1] The limit has not been adjusted to account for any imports exported after December 31, 1998.

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–32480 Filed 12–14–99; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection; Comment Request—Citizens Band Base Station Antennas

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval of a collection of information from manufacturers and importers of citizens band base station antennas. The collection of information is in regulations implementing the Safety Standard for Omnidirectional Citizens Band Base Station Antennas (16 CFR Part 1204). These regulations establish testing and recordkeeping requirements for manufacturers and importers of antennas subject to the standard. The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from the Office of Management and Budget (OMB).

DATES: The Office of the Secretary must receive comments not later than February 14, 2000.

ADDRESSES: Written comments should be captioned ''Citizens Band Base Station Antennas'' and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to that office, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: For information about the proposed extension of approval of the collection of information, or to obtain a copy of 16 CFR Part 1204, call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0416, extension 2226.

SUPPLEMENTARY INFORMATION:

A. Background

In 1982, the Commission issued the Safety Standard for Omnidirectional Citizens Band Antennas (16 CFR Part 1204) to reduce risks of death and serious injury that may result if an omnidirectional antenna contacts an overhead power line while being erected or removed from its site. The standard contains performance tests to demonstrate that an antenna will not transmit a harmful electric current if it contacts an electric power line with a voltage of 14,500 volts phase-to-ground. Certification regulations implementing the standard require manufacturers, importers, and private labelers of antennas subject to the standard to perform tests to demonstrate that those products meet the requirements of the standard, and to maintain records of those tests. The certification regulations are codified at 16 CFR Part 1204, Subpart B.

The Commission uses the information compiled and maintained by manufacturers, importers, and private labelers of antennas subject to the standard to help protect the public from risks of injury or death associated with omnidirectional citizens band base station antennas. More specifically, this information helps the Commission determine that antennas subject to the standard comply with all applicable requirements. The Commission also uses this information to obtain corrective actions if omnidirectional citizens band base station antennas fail to comply with the standard in a manner which creates a substantial risk of injury to the public. The Office of Management and Budget approved the collection of information in the certification regulations under control number 3041–0006. OMB's most recent extension of approval expires on April 30, 2000. The Commission now proposes to request an extension of approval without change for the collection of information in the certification regulations.

B. Estimated Burden

The Commission staff estimates that about 5 firms manufacture or import citizens band base station antennas subject to the standard. The Commission staff estimates that the certification regulations will impose an average annual burden of about 220 hours on each of those firms. That burden will result from conducting the testing required by the regulations and maintaining records of the results of that testing. The total annual burden imposed by the regulations on manufacturers and importers of citizens band base station antennas is approximately 1,100 hours.

The hourly wage for the testing and recordkeeping required to conduct the testing and maintain records required by the regulations is about $55, for an estimated annual cost to the industry of $60,500.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: December 9, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99–32414 Filed 12–14–99; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Requirements for Baby-Bouncers, Walker-Jumpers, and Baby-Walkers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the **Federal Register** of October 4, 1999 (64 FR 54621), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of the collection of information in the requirements for baby-bouncers, walker-jumpers, and baby-walkers in regulations codified at 16 CFR 1500.18(a)(6) and 1500.86(a)(4).

Two comments from members of the public were received in response to the **Federal Register** notice. Both comments

supported extension of the collection of information. One of the comments, however, made a number of suggestions regarding the substance of the regulations. As these suggestions are outside the scope of this request to extend the collection of information, the Commission staff is unable to address them at this time. By publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget (OMB) a request for extension of approval of that collection of information without change.

The regulation codified at 16 CFR 1500.18(a)(6) establishes safety requirements for baby-bouncers, walker-jumpers, and baby-walkers to reduce unreasonable risks of injury to children associated with those products. Those risks of injury include amputations, crushing, lacerations, fractures, hematomas, bruises and other injuries to children's fingers, toes, and other parts of their bodies. The regulation codified at 16 CFR 1500.86(a)(4) requires manufacturers and importers of baby-bouncers, walker-jumpers, and baby-walkers to maintain records for three years containing information about testing, inspections, sales and distribution of these products.

The records of testing and other information required by the regulations allow the Commission to determine if baby-bouncers, walker-jumpers, and baby-walkers comply with the requirements of the regulation codified at 16 CFR 1500.18(a)(6). If the Commission determines that products fail to comply with the regulations, the records required by 16 CFR 1500.86(a)(4) enable the firm and the Commission to: (i) Identify specific models of products which fail to comply with applicable requirements; and (ii) Notify distributors and retailers in the event those products are subject to recall.

Additional Information About the Request for Reinstatement of Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Requirements for Baby-Bouncers, Walker-Jumpers, and Baby-Walkers, 16 CFR 1500.18(a)(6) and 1500.86(a)(4).

Type of request: Reinstatement of approval without change.

General description of respondents: Manufacturers and importers of baby-bouncers, walker-jumpers, and baby-walkers.

Estimated number of respondents: 26.

Estimated average number of hours per respondent: 2 per year.

Estimated number of hours for all respondents: 52 per year.

Estimated cost of collection for all respondents: $650 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by January 14, 2000 to (1) The Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington D.C. 20503; telephone: (202) 395–7340, and (2) The Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

Copies of this request for extension of the information collection requirements and supporting documentation are available from Linda Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone: (301) 504–0416, ext. 2226.

Dated: December 9, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99–32415 Filed 12–14–99; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Flammability Standards for Children's Sleepwear

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the **Federal Register** of October 6, 1999 (64 FR 54276), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of collections of information in the flammability standards for children's sleepwear and implementing regulations. No comments were received in response to that notice. By publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget (OMB) a request for extension of approval of those collections of information without change for three years from the date of approval.

The standards and regulations are codified as the Flammability Standard for Children's Sleepwear: Sizes 0 Through 6X, 16 CFR Part 1615; and the Flammability Standard for Children's Sleepwear: Sizes 7 Through 14, 16 CFR Part 1616. The flammability standards and implementing regulations prescribe requirements for testing and recordkeeping by manufacturers and importers of children's sleepwear subject to the standards. The information in the records required by the regulations allows the Commission to determine if items of children's sleepwear comply with the applicable standard. This information also enables the Commission to obtain corrective actions if items of children's sleepwear fail to comply with the applicable standard in a manner which creates a substantial risk of injury.

Additional Information About the Request for Reinstatement of Approval of Collections of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X, 16 CFR Part 1615; Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14, 16 CFR Part 1616.

Type of request: Extension of approval without change.

General description of respondents: Manufacturers and importers of children's sleepwear in sizes 0 through 14.

Estimated number of respondents: 63.

Estimated average number of hours per respondent: 1,650 per year.

Estimated number of hours for all respondents: 103,950 per year.

Estimated cost of collection for all respondents: $3,118,500 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by January 14, 2000 to:

(1) The Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington D.C. 20503; telephone: (202) 395–7340, and

(2) The Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

Copies of this request for extension of the information collection requirements

and supporting documentation are available from Linda Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone: (301) 504–0416, ext. 2226.

Dated: December 9, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99–32416 Filed 12–14–99; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Proposal To Issue and Modify Nationwide Permits

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice of extension of expiration date for Nationwide Permit 26.

SUMMARY: In Part III of the July 21, 1999, issue of the **Federal Register** (64 FR 39252), the Corps of Engineers (Corps) published its proposal to issue five new Nationwide Permits (NWPs), to modify six existing NWPs, and add three new NWP general conditions to replace NWP 26 when it expires. To thoroughly review and consider the 1,700 comments received in response to the July 21, 1999, **Federal Register** notice and make necessary changes to the proposed NWPs and general conditions, additional time is required and a new schedule for finalizing the NWPs has been developed. The Corps is also announcing a process for submitting NWP 26 PCNs that will provide for an efficient transition from NWP 26 to the new and modified NWPs.

DATES: The process for accepting NWP 26 PCNs is effective on December 15, 1999.

ADDRESSES: HQUSACE, ATTN: CECW–OR, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson or Mr. Sam Collinson at (202) 761–0199 or access the Corps of Engineers Regulatory Home Page at: http://www.usace.army.mil/inet/functions/cw/cecwo/reg/.

SUPPLEMENTARY INFORMATION: In response to the proposal published in the July 21, 1999, **Federal Register** to issue 5 new NWPs, to modify 6 existing NWPs, and to add 3 new NWP general conditions to replace NWP 26, the Corps received over 1,700 comments. To thoroughly review and consider these comments, the Corps needs additional time to make changes to the proposed new and modified NWPs and general conditions and address the comments received in response to the July 21, 1999, **Federal Register** notice. The new and modified NWPs will be issued on or before February 14, 2000, and will become effective 60 days later on or before April 14, 2000.

To ensure that there continues to be an NWP available to authorize activities in headwaters and isolated waters that have minimal adverse effects on the aquatic environment, the expiration date of NWP 26 is extended until April 14, 2000, except as indicated below. To provide an efficient transition from NWP 26 to the new and modified NWPs that will replace NWP 26, Corps district offices will process all preconstruction notifications (PCNs) for NWP 26 activities that are submitted to Corps district offices on or before the publication date of the final new and modified NWPs in the **Federal Register** (currently scheduled for February 14, 2000). For such NWP 26 PCNs, where the Corps subsequently determines that the project meets the terms and conditions of NWP 26, the verification will remain in effect until February 11, 2002. As of today, the Corps is suspending the 45 day period in paragraph (a)(3) of General Condition 13. The Corps will continue to process such PCNs and reach final decisions as expeditiously as possible. However, a prospective permittee who submits a NWP 26 PCN after today's date cannot assume, after 45 days have passed, that the proposed work is authorized by NWP 26. Consequently, an NWP 26 verification must be received prior to commencing the work. PCNs submitted to Corps district offices after the publication date of the final new and modified NWPs will be processed under the procedures for the new and modified NWPs or the other existing NWPs. The revised schedule for the new and modified NWPs is illustrated in Figure 1.

Dated: December 10, 1999.

Charles M. Hess,

Chief, Operations Division, Directorate of Civil Works.

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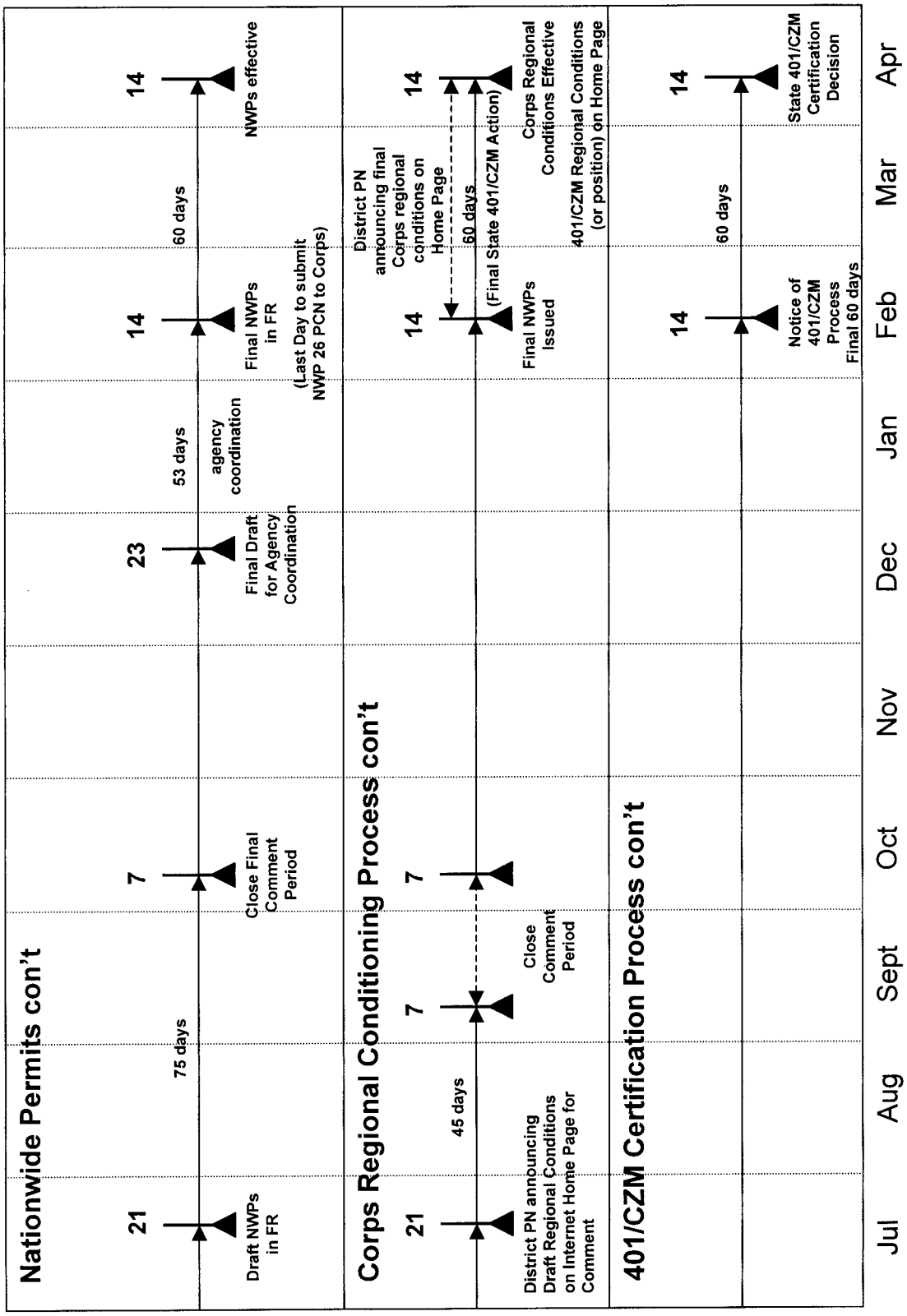
Figure 1 - 1999/2000 Nationwide Permit Milestones - Part II



[FR Doc. 99–32505 Filed 12–14–99; 8:45 am]

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DEPARTMENT OF ENERGY

Sandia National Laboratories/New Mexico Site-Wide Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Record of Decision.

SUMMARY: The U.S. Department of Energy (DOE) is issuing this Record of Decision on the continued operation of the Sandia National Laboratories/New Mexico (SNL/NM) in the State of New Mexico. This Record of Decision is based on the information and analysis contained in the SNL/NM Site-Wide Environmental Impact Statement (EIS), DOE/EIS–0281, and other factors, such as the mission responsibilities of DOE. DOE has decided to implement the Expanded Operations Alternative without the Microsystems and Engineering Sciences Applications Complex, *i.e.,* the Preferred Alternative in the Final Site-Wide EIS. Under the Expanded Operations Alternative, DOE and interagency programs and activities at SNL/NM could increase to the highest reasonable activity levels, as set forth in the Site-Wide EIS, that could be supported by current facilities and their potential expansion and construction of new facilities for future actions specifically identified in the Site-Wide EIS through 2008.

FOR FURTHER INFORMATION CONTACT: For further information on the Site-Wide EIS or Record of Decision, or to receive a copy of the Site-Wide EIS, contact: Julianne Levings, Document Manager, U.S. Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, NM 87185, (505) 845–6201.

For information on the DOE National Environmental Policy Act (NEPA) process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–4600, or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background

DOE prepared this Record of Decision pursuant to the regulations of the Council on Environmental Quality for implementing NEPA (40 CFR Parts 1500–1508) and DOE's NEPA Implementing Procedures (10 CFR Part 1021). This Record of Decision is based, in part, on DOE's SNL/NM Site-Wide EIS (DOE/EIS–0281). The U.S. Air Force participated as a cooperating agency in preparing the Site-Wide EIS.

SNL/NM is located on the Kirtland Air Force Base, approximately 7 miles southeast of downtown Albuquerque, in Bernalillo County, New Mexico. SNL/NM comprises approximately 8,800 acres of Federal land on the Kirtland Air Force Base. SNL/NM is one of several national laboratories that support DOE's statutory responsibilities for nuclear weapons research and design, development of other energy technologies, and basic scientific research. Sandia National Laboratories is composed of four geographically separate facilities: Albuquerque, New Mexico (SNL/NM); Tonopah, Nevada; Kauai, Hawaii; and Livermore, California. This Record of Decision covers the level of operation of SNL/NM only. DOE has assigned elements of each of its four principal missions (National Security, Energy Resources, Environmental Quality, and Science and Technology) to SNL/NM, and has established and maintains several capabilities in support of these mission elements, including applications of science and technology to the nuclear weapons program. These capabilities also support applications for other Federal agencies and other organizations in accordance with national priorities and policies.

Facility operations are conducted within five Technical Areas (TAs) and outdoor test areas. These TAs comprise the basic geographic configuration of SNL/NM. TA–I is the main administration and support area and contains several research laboratories. TA–II consists primarily of support service facilities and waste management facilities. TA–III conducts primarily physical testing. TA–IV contains primarily accelerator operations. TA–V contains primarily reactor facilities.

The Site-Wide EIS considers the environmental impacts of ongoing and proposed activities at SNL/NM through 2008. DOE expects that it will continue to suggest new programs, projects, and facilities for SNL/NM (or consider SNL/NM as an alternative site for such facilities or activities). Such new proposals will be considered in programmatic or project-specific NEPA reviews, as appropriate, as they become ripe for analysis. Subsequent NEPA reviews for projects or activities at SNL/NM will make reference to, and be tiered from, the Site-Wide EIS, and subsequent DOE decisions on these proposals may result in amendments of this Record of Decision.

Alternatives Considered

DOE analyzed three broad alternative levels of operation at SNL/NM.

Alternative 1—No Action

Under the No Action Alternative, ongoing DOE and interagency programs and activities at SNL/NM would continue the status quo, that is, operating at planned levels as reflected in current DOE management plans. In some cases, these planned levels include increases over today's operating levels. This alternative also includes any activities that have already been approved by DOE and have existing NEPA documentation.

Alternative 2—Expanded Operations

Under the Expanded Operations Alternative, DOE and interagency programs and activities at SNL/NM would increase to the highest reasonable activity levels, as analyzed in the Site-Wide EIS, that could be supported by current facilities and their potential expansion as well as construction of new facilities for future actions specifically identified in the Site-Wide EIS.

In the Expanded Operations Alternative in the Final Site-Wide EIS, DOE described two potential configurations for the Microelectronics Development Laboratory facility. In the first configuration, the Site-Wide EIS analyzed the expansion of operations in the existing Microelectronics Development Laboratory (also analyzed in the Draft Site-Wide EIS). In the second configuration, the Site-Wide EIS presented the available information on the developing proposal for the Microsystems and Engineering Sciences Applications Complex, also known as MESA, including impacts from the construction and operation of additional buildings adjacent to the existing Microelectronics Development Laboratory. DOE included in the second configuration of the Expanded Operations Alternative all available programmatic and environmental information on the Microsystems and Engineering Sciences Applications Complex based on its approved Conceptual Design Plan.

DOE's Preferred Alternative in the Final Site-Wide EIS was Expanded Operations in the first configuration (*i.e.,* without the Microsystems and Engineering Sciences Applications Complex).

The conceptual design for the Microsystems and Engineering Sciences Applications Complex will be finalized in the January 2000 timeframe with the issuance of the Conceptual Design Report currently under preparation. The information on the Microsystems and Engineering Sciences Applications Complex in the Site-Wide EIS is

preliminary (based on the Conceptual Design Plan), and was added after the Draft Site-Wide EIS was issued for public review and comment. Therefore, DOE has determined that an additional NEPA review will be conducted after the conceptual design is finalized to evaluate impacts from the proposed construction and operation of the Microsystems and Engineering Sciences Applications Complex. Based on the current configuration for the proposed Microsystems and Engineering Sciences Applications Complex, DOE is preparing an Environmental Assessment to determine whether an EIS is required and will include an opportunity for public participation.

Alternative 3—Reduced Operations

Under the Reduced Operations Alternative, DOE and interagency programs and activities at SNL/NM would be reduced to the minimum levels of operations needed to maintain SNL/NM facilities and equipment in an operational readiness mode.

Preferred Alternative

DOE's Preferred Alternative is the Expanded Operations Alternative (exclusive of the Microsystems and Engineering Sciences Applications Complex). DOE would expand operations at SNL/NM as the need arises, subject to the availability of Congressional appropriations, to increase the level of existing operations to the highest reasonable foreseeable activity levels as analyzed in the Site-Wide EIS. DOE would only implement expansion at the existing Microelectronics Development Laboratory, without addition of the Microsystems and Engineering Sciences Applications Complex.

Environmentally Preferable Alternative

The Council on Environmental Quality (CEQ), in its ''Forty Most Asked Questions Concerning CEQ's NEPA Regulations'' (46 FR 18026, February 23, 1981), with regard to 40 CFR 1505.2, defined the ''environmentally preferable alternative'' as the alternative ''that will promote the national environmental policy as expressed in NEPA's Section 101. Ordinarily, this means the alternative that causes the least damage to the biological and physical environment; it also means the alternative which best protects, preserves, and enhances historic, cultural, and natural resources.''

After considering impacts to each resource area by alternative, DOE has identified Alternative 3, the Reduced Operations Alternative, as the environmentally preferable alternative. DOE identified Alternative 3 as having the fewest impacts to the physical environment and to worker and public health and safety because all operations would be at the lowest levels. Therefore, the Reduced Operations Alternative would have the lowest impacts, and the Expanded Operations Alternative would have the highest impacts among the alternatives analyzed in the Site-Wide EIS. However, the analyses included in the Site-Wide EIS indicate that there would be little difference in the environmental impacts among the alternatives analyzed and also that any impacts would be small.

Environmental Impacts of Alternatives

DOE weighed environmental impacts as one factor in its decision making. DOE analyzed existing environmental impacts and the potential impacts that might occur for each alternative, including the irreversible or irretrievable commitments of resources.

Land Use and Visual Resources

No adverse impacts to land resources are expected as a result of the No Action, Expanded Operations, or Reduced Operations Alternatives. There would be no adverse impacts to visual resources that change the overall appearance of the existing landscape, obscure views, or alter the visibility of SNL/NM structures under any of the alternatives analyzed.

Infrastructure

Electrical consumption would range from 185,000 megawatt hours per year (Reduced Operations Alternative) to 198,000 megawatt hours per year (Preferred Alternative). Projected water usage would range from 416 million gallons (Reduced Operations Alternative) to 495 million gallons per year (Preferred Alternative). Annual projected utility demands for all alternatives would be well within system capacities.

Other infrastructure-related factors, including maintenance, roads, communications, steam, natural gas, and facility decommissioning, would be similar for each alternative and would not pose adverse impacts.

Geology and Soils

Under all alternatives, impacts due to soil contamination would be minimal. Under the Preferred Alternative, however, there would be the potential for increased deposition of soil contaminants in outdoor testing areas. These areas are not accessible to the general public. Potential contaminants would include depleted uranium fragments, explosive residue, and metals contained in weapons that are used in the tests. SNL/NM performs periodic sampling and radiation surveys in these testing areas. Depleted uranium fragments are collected after tests and additional measures are taken to remove any contamination from the soil.

Soil contamination from past research practices is being cleaned up through SNL/NM's Environmental Restoration Project, which is scheduled for completion by 2004. This clean-up would occur at the same rate under the three alternatives.

Water Resources and Hydrology

The impact resulting from SNL/NM's contribution to drawdown in the aquifer derives from both past and present water usage and is considered to be adverse. The estimated SNL/NM portion of local (in the immediate vicinity of the Kirtland Air Force Base) aquifer drawdown from 1998 to 2008 would range from 11 percent (No Action and Reduced Operations Alternatives) to 12 percent (Preferred Alternative). Local drawdown of the aquifer would range from less than 1 to 28 feet across the Kirtland Air Force Base during this period. This drawdown would not have an immediate effect on other water users, spring flow, or land subsidence. Long-term effects would tend to be reduced by the city of Albuquerque's conversion to surface water use, scheduled to begin in 2004. Water demand under each alternative would be within existing Kirtland Air Force Base water rights. As discussed above, under Infrastructure, water usage would range from 416 million gallons per year (Reduced Operations Alternative) to 495 million gallons per year (Preferred Alternative).

Groundwater contamination attributable to SNL/NM activities is present at three sites at the Kirtland Air Force Base. The contamination in the aquifer is due to past waste management practices rather than current operations. Investigation and clean-up at locations with groundwater contamination would continue at the same rate under any of the three alternatives.

Biological and Ecological Resources

Long-term restricted access and limited planned development have benefitted biological resources at the Kirtland Air Force Base. This benefit would continue under all alternatives. Proposed activities under all the alternatives could result in a local displacement of wildlife; however, the impact would be minimal and temporary. In addition, there would be slightly increased levels of noise and activity under the Preferred Alternative.

However, the impacts from these increases are expected to be negligible to biological and ecological resources. There are no endangered and threatened species issues at SNL/NM.

Cultural Resources

Cultural resources in the Region of Influence have benefitted from restricted access, compliance with applicable regulations, and established procedures for the protection and conservation of cultural resources. This benefit would continue under all alternatives. There are no known cultural resource sites at DOE-administered land at the Kirtland Air Force Base. For all three alternatives, there would continue to be a potential for impacts to prehistoric and historic archaeological resources located on Kirtland Air Force Base lands administered by other agencies and used by DOE. These impacts would derive from explosive testing debris and shrapnel produced as a result of outdoor explosions, off-road vehicle traffic, and unintended fires and fire suppression. However, the potential for impacts due to these factors would be minimal under all three alternatives.

DOE is involved in ongoing consultation with 15 Native American tribes to discuss Traditional Cultural Properties at SNL/NM. To date, no Traditional Cultural Properties have been specifically identified at SNL/NM; however, several tribes have requested that they be consulted under the Native American Graves Protection and Repatriation Act if human remains are discovered within the Region of Influence. These consultations will continue. If specific Traditional Cultural Properties are identified, any impacts of SNL/NM activities on the Traditional Cultural Properties and any impacts of restricting access to the Traditional Cultural Properties would be determined in consultation with Native American tribes, and further NEPA review would be conducted, if appropriate.

Air Quality

Chemical emissions would be highest for the Preferred Alternative, although emissions under all alternatives would be below levels that would adversely affect public health. Air concentrations of criteria and other chemical pollutants would be within regulatory standards and human health guidelines. The impact from emissions of criteria and other pollutants for the No Action and the Preferred alternatives would be essentially the same.

The major source of criteria pollutants (other than mobile sources) would be the steam plant, which supplies steam to the facilities for heating. No increase in laboratory-wide floor space is anticipated under the Preferred Alternative because any added floor space is expected to be offset by facilities taken out of service; therefore, no increase in steam production would be required. Among the three alternatives, the Reduced Operations Alternative would require the least steam, resulting in the lowest emissions from the steam plant.

Air quality impacts from mobile sources vary slightly among the alternatives but are not considered adverse. The analysis indicates carbon monoxide emissions from mobile sources as a percentage of the Bernalillo County total would be 4.6 percent (No Action Alternative), 5.1 percent (Preferred Alternative), and 4.5 percent (Reduced Operations Alternative).

The radiological dose impacts due to the annual air emissions from SNL/NM facilities during normal operations under each of the alternatives would be lower than the National Emissions Standards for Hazardous Air Pollutants limit of 10 millirem per year to a maximally exposed individual. The calculated radiological dose to a maximally exposed individual would be 0.15 millirem per year under the No Action Alternative; 0.51 millirem per year under the Preferred Alternative; and 0.02 millirem per year under the Reduced Operations Alternative.

The calculated collective dose to the population within a 50-mile radius of SNL/NM for each alternative from the annual radiological air emissions due to the SNL/NM operations would be 5.0 person-rem per year under the No Action Alternative, 15.8 person-rem per year under the Preferred Alternative, and 0.80 person-rem per year under the Reduced Operations Alternative.

Human Health

The composite cancer health risk estimates and the cancer health risk estimates for specific receptor locations are below levels that regulators consider protective of public health. The small amounts of chemical carcinogens and radiation released from SNL/NM facilities would increase the maximally exposed individual lifetime risk of cancer (assuming 30 years of exposure) by less than 1 chance in 434,000 under the No Action Alternative and by less than a possible 1 chance in 126,000 under the Preferred Alternative. Noncancer health effects would not be expected under any alternative based on hazard index values of less than 1. No additional nonfatal cancers, genetic disorders, or latent cancer fatalities would be expected in the population living within a 50-mile radius of SNL/NM. The lifetime risk to the population in the Region of Influence would be 0.012, 0.075, and 0.24 latent cancer fatalities for the Reduced, No Action, and Preferred alternatives, respectively. Thus, no adverse health effects would be expected from any of the three alternatives for SNL/NM.

Transportation

The SNL/NM material and waste truck traffic offsite would be projected to increase from 14.5 shipments per day (1996) to 24.6 and 34.4 shipments per day under the No Action and Preferred alternatives, respectively. However, the SNL/NM truck traffic would comprise less than 0.03 percent of the total traffic, including all types of vehicles entering and leaving the Albuquerque area by way of interstate highways. Therefore, the impact under any alternative would be minimal. The total local traffic on roadways from SNL/NM activities could increase by a maximum of 1.8 percent under the No Action Alternative and 3.6 percent overall under the Preferred Alternative as compared to 1996.

The overall maximum lifetime fatalities from SNL/NM annual shipments of all types of materials and wastes due to SNL/NM operations were estimated to be 1.7 fatalities under the Preferred Alternative. Of these estimates, 1.2 fatalities would be due to traffic accidents; 0.33 fatalities would be due to incident-free transport of radiological materials and wastes; and 0.06 fatalities would be due to air pollution from truck emissions.

The maximum latent cancer fatalities in the population within a 50-mile radius of SNL/NM from the annual transport of radiological materials and wastes were estimated, based on a population dose of 4.9 person-rem, to be 0.0025.

Waste Generation

Operations of low-level waste and low-level mixed waste are expected to increase by a maximum of about 200 and 70 percent, respectively, under the Preferred Alternative, as compared to 1996. One new operation, the Medical Isotopes Production Project, would be the major contributor to the low-level waste increase. Approximate total radioactive waste generation would be up to 180 cubic meters under the No Action Alternative, up to 290 cubic meters under the Preferred Alternative, and 110 cubic meters under the Reduced Operations Alternative. Total chemical waste generation would be up to approximately 380,000 kilograms under the No Action Alternative, up to

approximately 440,000 kilograms under the Preferred Alternative, and up to approximately 310,000 kilograms under the Reduced Operations Alternative. Capacity currently exists to manage the waste generated from all operations at the Preferred Alternative level.

Noise and Vibration

Under the No Action Alternative, SNL/NM would operate at current planned levels, which include background noise levels and short-term noise impacts from SNL/NM test activities. By 2008, impulse noise-producing test activities would increase an estimated 35 percent over the 1996 level of 1,059 events. The projected frequency of impulse noise events for the Reduced OperationsAlternative would be 65 percent less than the 1996 levels.

Projections under the Preferred Alternative indicate a 250 percent increase in the number of impulse noise tests over 1996 levels.

Only a small fraction of these tests would be loud enough to be heard or felt beyond the site boundary. The vast majority of tests would be below background noise levels for locations beyond the Kirtland Air Force Base boundary and would be unnoticed in neighborhoods bounding the site. Ground vibrations would remain confined to the immediate test area.

Socioeconomics

Direct SNL/NM employment projections range from about 7,400 (Reduced Operations Alternative) to about 8,400 (Preferred Alternative), in comparison to about 7,600 full-time SNL/NM employees in the 1996 base year. These employment changes would change regional population, employment, personal income, and other socioeconomic measures in the region by less than 1 percent. Accordingly, no adverse socioeconomic impacts would be expected to result from any of the alternatives.

Environmental Justice

Based on the analyses of all resource areas and demographic information on low-income and minority population, DOE does not expect any environmental justice-related impacts from the continued operation of SNL/NM under any of the alternatives.

Accidents

The accident scenarios discussed are those that bound, *i.e.,* provide an upper limit to potential impacts or risks, the accidents at SNL/NM. At SNL/NM, accidents could occur that would affect workers and the public. Potential accidents with the largest impacts would involve radioactive materials in TA–V facilities and hazardous chemicals in TA–I facilities. In most instances, involved workers (those individuals located in the immediate vicinity of an accident) would incur the largest risk of serious injury or fatality, because, for most accidents, the magnitude of the damaging effects are highest at the point of the accident and diminish with increasing distance. This result would apply, for example, to releases of radioactive and chemical materials, explosions, fires, airplane crashes, earthquakes, and similar events. In some situations, however, the mitigating effects of structural barriers, personal protection equipment, and engineered safety features could offer greater protection for close-in workers than for others in the general vicinity of the accident.

In TA–I, under all three alternatives, there could be numerous situations in laboratory rooms where workers could be accidentally exposed to small amounts of potentially harmful chemicals. The potential also exists in TA–I for a catastrophic accident, such as an airplane crash into a facility or an earthquake, in which multiple potentially harmful chemicals could be released and expose onsite individuals to harmful or fatal chemical concentrations. Large quantities of hydrogen stored in outside areas of TA–I could also explode as a result of a catastrophic event and cause serious injury or fatality to involved workers and other nearby onsite individuals. The probability of a catastrophic chemical or explosive accident with serious consequences is low (less than once in a thousand years). Should such an accident occur, emergency procedures, mitigating features, and administrative controls would minimize its adverse impacts.

Under the Preferred Alternative, the Microelectronics Development Laboratory and the Compound Semiconductor Research Laboratory would remain in their present configuration. In the event of a catastrophic accident, such as an airplane crash into either facility (but not both), the dominant chemical release would be as much as 106 pounds of chlorine from the Microelectronics Development Laboratory or as much as 65 pounds of arsine from the Compound Semiconductor Research Laboratory. If an accident that causes chemical releases were to occur, about 141 persons in the vicinity of the Microelectronics Development Laboratory or 409 persons in the vicinity of the Compound Semiconductor Research Laboratory could be exposed to concentrations greater than Emergency Response Planning Guideline (ERPG) Level 2. The ERPG–2 level is the maximum airborne concentration below which individuals could be exposed for up to one hour without experiencing or developing irreversible or other serious health effects that could impair their ability to take protective action. In the event of an earthquake, simultaneous release of chemicals is possible, and as many as 423 persons could be exposed in TA–I to concentrations greater than ERPG–2 levels.

The potential for accidents would exist in TA–V that would cause the release of radioactive materials, causing injury to workers, onsite individuals, and the public. For example, if an earthquake occurred, the impacts would range from a 1 in 33 increase in probability of a latent cancer fatality for a noninvolved worker on the site to 1 in 120,000 for a maximally exposed member of the public. For the entire population residing within 50 miles of SNL/NM, one or two additional latent cancer fatalities would be expected. Involved workers, as in the case of chemical accidents, would incur the largest risk of injury or fatality in the event of almost any accident because of their close proximity to the hazardous conditions.

Comments on the Final Site-Wide Environmental Impact Statement

DOE distributed approximately 500 copies of the Final Site-Wide EIS to appropriate Congressional members and committees, the State of New Mexico, various American Indian Tribal governments and organizations, local governments, other Federal agencies, and other interested stakeholders. DOE did not receive any comments on the Final Site-Wide EIS.

Other Decision Factors

As directed by the President and Congress, DOE has a comprehensive stewardship program which is maintaining the safety, security and reliability of the country's nuclear weapons stockpile. In addition, DOE has national security, energy resources, environmental quality, and science and technology mission lines, which it supports at a number of facilities across the United States. DOE directs and funds SNL/NM activities in support of its programs and missions. In turn, SNL/NM's facilities and operations are designed to meet the requirements of the programs, projects, and activities assigned to the Laboratory.

DOE needs to continue to meet its responsibilities for national security, energy resources, environmental quality, and science and technology at SNL/NM. DOE needs to continue to fulfill its responsibilities as mandated by statute, Presidential Decision Directive, and Congressional authorization and appropriation, while meeting this need in a manner that protects human health and the environment.

As noted in the Site-Wide EIS, SNL/NM houses unique facilities and expertise that have been developed over the past 50 years. These capabilities have well served national security and other national needs in the past. It is expected that, for the foreseeable future, the U.S. will maintain a nuclear weapons stockpile and require advanced science and manufacturing capabilities to address issues of national importance for the maintenance of that stockpile and for other purposes, including assuring the safety and reliability of that stockpile. The unique facilities and expertise at SNL/NM are needed to assist in finding solutions to these issues. These factors were also considered (in addition to the human health and environmental impact information discussed above) in reaching this Record of Decision.

Decision

DOE has decided to expand the scope and levels of its operations at SNL/NM. DOE is implementing the Preferred Alternative, that is, Alternative 2, Expanded Operations (exclusive of the Microsystems and Engineering Sciences Applications Complex). This alternative reflects a broad expansion of science and technology research and applications of this research to a variety of issues of national importance. This alternative also includes the continued maintenance of existing and expanded capabilities, and continued support and infrastructure activities. The following discussion describes the major actions to be taken, with an emphasis on those areas that have had the most extensive programmatic or public interest.

The decisions in this Record of Decision will be reflected in DOE budget requests and management practices, consistent with mission needs. However, implementation of these decisions depends on Congressional funding levels.

Selected Facilities in Technical Areas I and II

The Neutron Generator Facility will continue to fabricate neutron generators and neutron tubes. Support activities will include a wide variety of manufacturing, testing, and product development techniques and processes. The Neutron Generator Facility will increase manufacturing to approximately 2,000 neutron generators per year and associated neutron and switch tubes. An addition to an existing building will be constructed to meet increased production needs. Also, Building 870 will undergo extensive renovations.

The Microelectronic Development Laboratory will continue to conduct research and development activities on microelectronic devices for nuclear weapons. A broad range of microtechnology development and engineering activities, including integrated circuit and wafer production will continue. The Microelectronic Development Laboratory will be expanded to operate in support of research and development and production of silicon-based microelectronic devices; it will produce up to 7,500 wafers per year. DOE anticipates that new technologies and manufacturing processes will be required to meet expanded activities. There will be no construction of new facilities to meet this expanded wafer production, and the Compound Semiconductor Research Laboratory (Building 893) will remain in operation in its present location. This Record of Decision only extends to the existing Microelectronic Development Laboratory, without addition of the Microsystems and Engineering Sciences Applications Complex. As discussed in the Alternatives section of this Record of Decision, DOE is currently preparing an Environmental Assessment for the proposed construction and operation of the Microsystems and Engineering Sciences Applications Complex.

Advanced manufacturing techniques will continue to be developed and applied at the Advanced Manufacturing Processes Laboratory. These activities include hardware manufacturing, emergency and prototype manufacturing, development of manufacturing processes, and design and fabrication of production equipment. Operations at the Advanced Manufacturing Processes Laboratory will increase up to a maximum of 347,000 hours per year.

Research on materials and advanced components will continue at the Integrated Materials Research Laboratory. These activities will include basic research in chemistry, physics, and energy technologies. Operations at the Integrated Materials Research Laboratory will continue at its current capacity of approximately 395,000 hours per year.

The Explosive Components Facility will continue to support the work performed at the Neutron Generator Facility and the research and development performed on a variety of energetic components. Activities include research, testing, development, and quality control activities for neutron generators, explosives, chemicals, and batteries. Operations at the Explosive Components Facility will be expanded to complete up to 500 neutron generator tests, 900 explosive tests, 1,250 chemical analyses, and 100 battery tests annually.

Physical Testing and Simulation Facilities

Ballistic studies and solid-fuel rocket motor tests will continue at the Terminal Ballistics Complex. Testing capabilities will include research in areas of armor penetration, vulnerability, acceleration, flight dynamics, and accuracy. Projectile impact tests will include all calibers of projectiles. The operating level at the Terminal Ballistics Complex will be increased up to a maximum of 350 projectile impact tests and 100 propellant tests per year.

Tests designed for the validation of analytical modeling and weapons system certification will continue at the Drop/Impact Complex. Test activities will focus on water and underwater tests, design verification, and performance assessments. The Drop/Impact Complex tests will be expanded up to a maximum of 50 drop tests, 20 water impact tests, 5 submersion tests, and 10 underwater blast tests per year.

Tests that simulate high-speed impacts of weapon shapes, substructures, and components to verify design integrity, performance, and fusing functions will continue at the Sled Track Complex. These capabilities will include testing of parachute systems, transportation equipment, and reactor safety. Operating levels at the Sled Track Complex will be increased up to a maximum of 80 rocket sled tests, 239 explosive tests, 24 rocket launches, and 150 free-flight launches per year.

The Centrifuge Complex will continue to test objects weighing several tons at over 100 times the force of gravity. The number of tests for the Centrifuge Complex will increase up to a maximum of 120 centrifuge tests and 100 impact tests per year.

Accelerator Facilities

The SATURN accelerator will continue to produce X-rays to simulate the radiation effect of nuclear bursts on electronic and material components. Tests will include satellite systems,

weapons materials and components, and reentry vehicle and missile subsystems. The accelerator output for SATURN will increase up to a maximum of 500 shots annually.

The High-Energy Radiation Megavolt Electron Source III will continue to provide gamma ray effects testing capabilities. Tests will include electronic components and weapon systems and high-fidelity simulation over large areas in near nuclear-explosion radiation environments. The High-Energy Radiation Megavolt Electron Source III operations will increase up to a maximum number of 1,450 shots per year.

The Sandia Accelerator and Beam Research Experiment will continue to provide X-ray and gamma ray effects testing capabilities. Capabilities will include testing of pulsed-power technologies, fusion systems, weapons systems, computer science, flight dynamics, satellite systems, and robotics. Testing at the Sandia Accelerator and Beam Research Experiment will increase up to a maximum of 400 shots per year.

The Short-Pulse High Intensity Nanosecond X-Radiator will continue to produce high-voltage accelerations to measure X-ray-induced currents in integrated circuits and detect response in materials. Testing will include activities in radiation measurements for a variety of weapons components. Operations at the Short-Pulse High Intensity Nanosecond X-Radiator will increase up to a maximum of 6,000 shots per year.

The Repetitive High Energy Pulsed Power I will continue the development of pulsed-power technology, including high-power energy tests. Activities will include basic scientific research, development, and testing. The Repetitive High Energy Pulsed Power I operations will increase to support up to a maximum of 10,000 tests per year in either the single or repetitive pulse modes.

The Repetitive High Energy Pulsed Power II will continue to develop radiation processing applications using powerful electron or X-ray beams. Activities will include testing of high power magnetic switches and specialty transmission lines. The Repetitive High Energy Pulsed Power II capacity will be expanded up to a maximum of 20 tests per week for 40 weeks per year (800 tests).

The Z-Machine will continue to produce extremely short and powerful pulses at various targets to simulate special atmospheric conditions and fusion reaction conditions. The Z-Machine capability will be expanded up to a maximum of 350 firings per year. Approximately 78 percent could involve nuclear materials.

The Tera-Electron Volt Energy Superconductor Linear Accelerator will continue to test plasma opening switches for pulsed-power drivers. Other activities include basic research in science, material development, and material testing. The operating levels at the Tera-Electron Volt Energy Superconductor Linear Accelerator will be increased up to a maximum of 1,300 shots per year.

The Advanced Pulsed Power Research Module will continue to evaluate the performance and reliability of components including next-generation accelerators. Activities will include research and development in pulsed-power technologies such as power storage, high-voltage switching, and power flow. The Advanced Pulsed Power Research Module operations will increase up to a maximum of 2,000 shots per year.

The Radiographic Integrated Test Stand accelerator will continue to develop and demonstrate capabilities for future accelerator facility design. Capabilities will focus on demonstrating inductive voltage technology. The Radiographic Integrated Test Stand will increase operations up to a maximum of 800 tests per year.

Reactor Facilities

The New Gamma Irradiation Facility will perform a wide variety of gamma irradiation experiments under both dry and water-pool conditions. Capabilities will include studies in thermal and radiation effects, weapons component degradation, nuclear reactor material and components, and other nonweapon applications. The New Gamma Irradiation Facility will increase operations to irradiate test packages for a maximum of up to 24,000 test hours per year.

The Gamma Irradiation Facility will supplement the capabilities of the New Gamma Irradiation Facility. The Gamma Irradiation Facility will continue to perform gamma irradiation experiments, and its operations will be expanded to complete tests in two available cells. Approximately 8,000 test hours will be performed.

The Sandia Pulsed Reactor will continue to provide multiple fast-burst reactor, near-fusion spectrum radiation environments. Testing activities will include a wide variety of technologies that support both defense and nondefense projects. Modifications will be completed to enhance and expand current capabilities. Operating levels at the Sandia Pulsed Reactor will increase up to a maximum of 200 tests per year.

DOE considered two possible configurations for use of a pulsed-power reactor, the existing Annular Core Research Reactor reconfigured for Defense Programs use, and a possible second reactor referred to as the Annular Core Pulse Reactor II. However, a second reactor is not ripe for decision at this time, and if this additional reactor facility is proposed in the future, DOE will prepare a separate project-specific NEPA review.

The existing Annular Core Research Reactor can be operated in two ways: to produce medical isotopes or to support Defense Programs activities. Under the Annular Core Research Reactor Defense Programs configuration, the reactor will be reconfigured to pulse-mode operation to conduct a short-term test series (*i.e.*, up to about 18 months) related to the certification of some weapons components. Once the short-term testing is completed, the Annular Core Research Reactor will be converted back to medical isotope production.

Under the medical isotopes production configuration, the Annular Core Research Reactor will produce medical and research radioactive isotopes. Under the medical isotopes production configuration, the Annular Core Research Reactor will be operated for 24 hours per day, 7 days per week, at a maximum power level of 4 Megawatt (approximately 35,000 Megawatt-hours per year) to meet the entire U.S. demand for molybdenum-99 and other isotopes such as iodine-131, xenon-133, and iodine-125. This would require the irradiation of about 25 highly enriched uranium targets per week (1,300 per year).

The Hot Cell Facility will primarily support medical isotopes, including isotope extraction, isotope production purification, product packaging, and quality control. Support to Defense Programs activities will be provided as necessary for its short-term testing. The Hot Cell Facility will continuously process 100 percent of the U.S. demand for molybdenum-99 and other isotopes such as iodine-131, xenon-133, and iodine-125. This will require the processing of about 25 irradiated, highly enriched uranium targets per week (1,300 per year).

Outdoor Test Facilities

The Aerial Cable Facility will conduct a variety of impact tests involving weapon systems and aircraft components. Capabilities include free-fall drop, rocket pull-down, and captive flight tests, data recording, and simulation technologies. The Aerial

Cable Facility will be expanded to include drop tests of joint test assemblies that contain depleted uranium, enriched uranium, and insensitive high explosives. These test articles will contain up to a maximum of 45 pounds of depleted uranium, 120 pounds of enriched uranium, and 104 pounds of insensitive high explosives (plastic-bonded explosive [PBX]–9502 or press-moldable explosive [LX]–17). The number of tests using this kind of test article (containing depleted uranium, enriched uranium, and insensitive high explosives) will not exceed five per year. The total number of drop/pull-down tests will increase up to a maximum of 100 experiments per year. Aerial target tests will increase up to a maximum of 30 tests per year. Up to two series of scoring system tests will be conducted each year.

The Lurance Canyon Burn Site will continue to test, certify, and validate material and system tolerances. Test objects will be burned for short periods of time under controlled conditions. Up to a maximum number of approximately 55 certification tests per year will be conducted at the Lurance Canyon Burn Site. Model validation tests and user tests will increase up to a maximum of 100 and 50 per year, respectively.

The Containment Technology Test Facility—West will continue to conduct a series of successive events leading up to ultimate failure of test vessels. The Containment Technology Test Facility—West will perform up to two survivability tests per year.

The Explosives Applications Laboratory will continue to design, assemble, and test explosive materials, components, and equipment. Work will involve arming, fusing, and firing of explosives and testing of components. The number of explosive tests at the Explosives Applications Laboratory will increase up to a maximum of 360 tests per year.

The Thunder Range Complex will continue its activities ranging from disassembly and evaluation to calibration and verification testing of special nuclear and nonnuclear systems. Examination and testing of objects will involve cleaning, physical examination, disassembly, measurement, sampling, photography, and data collection. Operations at the Thunder Range Complex will increase up to a maximum of 10 test series per year in 2008. Equipment disassembly would increase up to 144 days per year.

Infrastructure Facilities

The Steam Plant will continue to produce and distribute steam to SNL/NM and Kirtland Air Force Base facilities. Steam production will remain at approximately 550 million pounds per year. The Steam Plant will require upgrades of several boilers, steam distributors, and natural gas supply systems. The boiler upgrade could include a technology change to cogeneration units.

The Hazardous Waste Management Facility will continue to handle, package, store, and ship hazardous, toxic, and nonhazardous chemical wastes. The Hazardous Waste Management Facility will continue to prepare wastes for offsite transportation for recycling, treatment, or disposal at licensed facilities. Operations at the Hazardous Waste Management Facility will increase from one to three shifts. Quantities of Resource Conservation and Recovery Act hazardous waste managed will be about 92,000 kilograms each year (well within the permitted capacity).

The Radioactive Mixed Waste Management Facility will continue to serve as a centralized facility for receipt, characterization, compaction, treatment, repackaging, certification, and storage of low-level waste, transuranic waste, low-level mixed waste, and mixed transuranic waste. The Radioactive Mixed Waste Management Facility will continue to prepare wastes for offsite treatment and disposal at licensed facilities. Operations at the Radioactive Mixed Waste Management Facility will be increased from one to two shifts. Annual quantities of radioactive waste managed (including newly generated and legacy waste) will be about 19,600 cubic feet for low-level waste. Annually, for low-level mixed waste, transuranic waste, and mixed transuranic waste, the quantities to be generated and managed are approximately as follows: 260 cubic feet low-level mixed waste generated, and 8,800 cubic feet managed; 26 cubic feet transuranic generated, and 350 cubic feet managed; 37 cubic feet mixed transuranic waste generated and managed. The infrastructure processing rate is 2.7 million pounds per year. A new prefabricated waste storage building would be constructed to replace an existing building to improve flexibility and operational efficiencies.

The Thermal Treatment Facility will continue to burn small quantities of explosive materials and explosives-contaminated water. The quantities of wastes treated at the Thermal Treatment Facility will increase. Approximately 1,200 pounds of waste per year would be thermally treated. This rate assumes that 60 burns are performed at 20 pounds of waste per burn. This rate will be implemented only if the regulatory authority approves the changes required to the Resource Conservation and Recovery Act permit for the Thermal Treatment Facility.

Mitigation Measures

The Site-Wide EIS included a discussion of existing programs, plans, and controls for operations at SNL/NM, including operating within applicable regulations, DOE Orders, contractual requirements and approved policies and procedures. No new mitigation measures were identified. It is unnecessary to prepare a Mitigation Action Plan under 10 CFR 1021.331.

Conclusion

DOE has considered environmental impacts, stakeholder concerns, and national policy in its decisions regarding the management and use of SNL/NM. The analysis contained in the Site-Wide EIS is both programmatic and site specific in detail. It is programmatic from the perspective of broad, multi-use facility management and site-specific in that it analyzes detailed project and program activity. The impacts identified in the Site-Wide EIS were based on conservative estimates and assumptions. In this regard, the analyses bound the impacts of the alternatives evaluated in the Site-Wide EIS.

DOE has decided to implement the Expanded Operations Alternative without the Microsystems and Engineering Sciences Applications Complex, i.e., the Preferred Alternative in the Final Site-Wide EIS. Thus, DOE and interagency programs and activities could increase to the highest reasonable activity levels, subject to mission need and Congressional funding and as set forth in the Site-Wide EIS, that could be supported by current facilities and their potential expansion and construction of new facilities for future actions identified in the Site-Wide EIS.

In accordance with the provisions of NEPA, its implementing procedures and regulations, and DOE's NEPA regulations, I have considered the information contained within the Site-Wide EIS, public comments received in response to the Site-Wide EIS, and other factors. Being fully apprised of the environmental consequences of the alternatives and other decision factors described above, I have decided to expand, as the need arises, the use of SNL/NM and its resources as described. This will enhance DOE's ability to meet its primary national security mission responsibility and create an environment that fosters technological innovation in both the public and private sectors.

Issued at Washington, DC, December 6, 1999.

Thomas F. Gioconda,

Brigadier General, USAF, Acting Assistant Secretary for Defense Programs.

[FR Doc. 99–32247 Filed 12–14–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 00–06; Energy Biosciences

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Basic Energy Sciences of the Office of Science (SC), U.S. Department of Energy (DOE) invites preapplications from potential applicants for research funding in the Energy Biosciences program area. The intent in asking for a preapplication is to save the time and effort of applicants in preparing and submitting a formal project application that may be inappropriate for the program. The preapplication should consist of a two to three page concept paper on the research contemplated for an application to the Energy Biosciences program. The concept paper should focus on the scientific objectives and significance of the planned research, and include an outline of the approaches planned, and any other information relating to the planned research. No budget information or biographical data need be included; nor is an institutional endorsement necessary. The preapplication gives us the opportunity to advise potential applicants on the suitability of their research ideas to the mission of the DOE Energy Biosciences program. A response indicating the appropriateness of submitting a formal application will be sent from the Division of Energy Biosciences office in time to allow for an adequate preparation period for a formal application.

DATES: For timely consideration, all preapplications should be received by March 8, 2000. However, earlier submissions will be gladly accepted.

A response to timely preapplications will be communicated to the applicant by April 12, 2000. The deadline for receipt of formal applications is June 13, 2000.

ADDRESSES: Preapplications referencing Program Notice 00–06 should be forwarded to: U.S. Department of Energy, Office of Basic Energy Sciences, SC–17, Division of Energy Biosciences, 19901 Germantown Road, Germantown, MD 20874–1290, Attn: Program Notice 00–06. Fax submissions are acceptable (Fax Number (301) 903–1003).

Formal applications, referencing Program Notice 00–06, must be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 00–06. This address must also be used when submitting applications by U.S. Postal Service Express Mail or any commercial overnight delivery service, or when hand-carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Snyder, Division of Energy Biosciences, Office of Basic Energy Sciences, SC–17, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–2873; E-mail pat.snyder@science.doe.gov.

SUPPLEMENTARY INFORMATION: Potential applicants should submit a brief preapplication which consists of two to three pages of narrative describing research objectives. These will be reviewed relative to the scope and the research needs of the Energy Biosciences program. The Energy Biosciences program has the mission of generating fundamental biological information about plants and non-medical related microorganisms that can provide support for future energy related biotechnologies. The objective is to pursue basic biochemical, genetic and physiological investigations that may contribute towards providing alternate fuels, petroleum replacement products, energy conservation measures as well as other technologies such as phytoremediation related to DOE programs. Areas of interest include bioenergetic systems, including photosynthesis; control of plant growth and development, including metabolic, genetic, and hormonal and ambient factor regulation, metabolic diversity, ion uptake, transport and accumulation, stress physiology and adaptation; genetic transmission and expression; plant-microbial interactions, plant cell wall structure and function; lignocellulose degradative mechanisms; mechanisms of fermentations, genetics of neglected microorganisms, energetics and membrane phenomena; thermophily (molecular basis of high temperature tolerance); microbial interactions; and one-carbon metabolism, which is the basis of biotransformations such as methanogenesis. The objective is to discern and understand basic mechanisms and principles.

Funds are expected to be available for new grant awards in FY 2001. The magnitude of these funds available and the number of awards which can be made will depend on the budget process. The awards made during FY 1999 averaged close to $105,000 per year, mostly for a three-year duration. The principal purpose in using preapplications at this time is to reduce the expenditure of time and effort of all parties.

The research description of the formal application must be 10 pages or less, exclusive of figure illustrations, and must contain an abstract or summary of the proposed research (to include the hypotheses being tested and the proposed experimental design). Attachments include curriculum vitae, a listing of all current and pending federal support, and letters of intent when collaborations are part of the proposed research.

Information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures may be found in the 10 CFR part 605 and the Application Guide for the Office of Science Financial Assistance Program. Electronic access to SC's Financial Assistance Guide is possible via the Internet using the following Web Site address: http://www.sc.doe.gov/production/grants/grants.html. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

The Catalog of Federal Domestic Assistance number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on December 6, 1999.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 99–32514 Filed 12–14–99; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–34–000]

Algonquin Gas Transmission Company; Notice of Application

December 9, 1999.

Take notice that on November 29, 1999, Algonquin Gas Transmission Company (Algonquin), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP00–34–000 an application pursuant to Sections 7(c) and 7(b) of the Natural Gas

Act for a certificate of public convenience and necessity to construct and operate certain pipeline and metering facilities in Weymouth and Braintree, Massachusetts and approval to abandon and replace certain facilities in Canton and Braintree, Massachusetts, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance).

Algonquin requests authorization to construct, own, operate and maintain one-half mile, 24-inch diameter pipeline lateral and measurement facilities in Weymouth and Braintree, Massachusetts, in order to render up to 140,000 dekatherms per day (dth/d) of firm transportation service for Sithe Power Marketing, L.P. (Sithe). Algonquin states that the proposed facilities are necessary to provide transportation service for Sithe to the Sithe Energy Fore River Station, a 750 megawatt gas-fired electric power plant being constructed by Sithe Edgar Development, L.L.C., near Weymouth, Massachusetts. Algonquin states that service to Sithe will be provided pursuant to Algonquin's existing open access Rate Schedule AFT–CL. Algonquin further states that Sithe and Algonquin have entered into a 20-year precedent agreement and a service agreement for the proposed transportation service. Algonquin states that its proposed initial rate is an incremental reservation charge rate; therefore, the project is financially viable without subsidies from Algonquin's existing customers.

Algonquin estimates the cost of the proposed project to be $32.02 million and will be financed through funds on hand and borrowings under short-term financing arrangements.

Algonquin also requests authorization to abandon the existing 6.9 mile, 10-inch diameter I–3 lateral, which extends from Milepost 0.0 in Canton, Massachusetts to Milepost 6.9 in Braintree, Massachusetts, which will be replaced by 6.9 miles of 24-inch diameter pipeline.

Any questions regarding the application should be directed to Steven E. Tillman, Director of Regulatory Affairs at (713) 627–5113, Algonquin Gas Transmission Company, Post Office Box 1642, Houston, Texas 77251–1642.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 30, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 285.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Algonquin to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32433 Filed 12–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–743–000]

Northeast Generation Company; Notice of Filing

December 9, 1999.

Take notice that on December 8, 1999, Northeast Generation Company (NGC), tendered for filing an amendment to its September 17, 1999, application for market-based rates to ensure that it has blanket approval under Section 204 of the Federal Power Act and Part 34 of the Commission's Regulations to issue securities and assume liabilities.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before December 20, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32431 Filed 12–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–004]

PG&E Gas Transmission, Northwest Corporation; Notice of Proposed Change in FERC Gas Tariff

December 9, 1999.

Take notice that on December 3, 1999, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Fourth Revised Sheet No. 7 and First Revised Sheet No. 7A, with an effective date of December 4, 1999.

PG&E GT–NW states that these sheets are being filed to reflect the implementation of two negotiated rate agreements.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers, and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the

Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32436 Filed 12–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–005]

PG&E Gas Transmission, Northwest Corporation; Notice of Proposed Change in FERC Gas Tariff

December 9, 1999.

Take notice that on December 1, 1999, PG&E Gas Transmission, Northwest Corporation PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Third Revised Sheet No. 7, and Original Sheet No. 7–A, with an effective date of December 1, 1999.

PG&E GT–NW states that these sheets are being filed to reflect the implementation of four negotiated rate agreements.

PG&E GT–NW further states that copies of the filing have been served on PG&E GT–NW's jurisdictional customers, and interested state regulatory agencies.

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 Rsegulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32437 Filed 12–14–99 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–26–000]

Reesor, Laura Lee; Notice of Complaint

December 9, 1999.

Take notice that on November 9, 1999, Laura Lee Reesor filed a Protest and Complaint of Vector Pipeline Company violating FERC Certificate Authorization Requirement and Comment on Project Related Project Issues in Docket Nos. CP98–131–000 and CP98–133–000.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before December 29, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before December 29, 1999.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32432 Filed 12–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–58–001]

Southwest Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

December 9, 1999.

Take notice that on December 1, 1999, Southwest Gas Storage Company (Southwest) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sub Original Sheet No. 117, to be effective December 15, 1999.

Southwest states that the purpose of this filing, made in accordance with the provisions of Section 154.204 of the Commission's Regulations, is to supplement Southwest's filing of November 1, 1999 in the referenced proceeding. In response to Dynegy Marketing & Trade's intervention in this proceeding dated November 15, 1999, Southwest is proposing to modify the time required for a shipper to take action to comply with an OFO from two hours to four hours. The tariff sheet included herewith revises Section 5.3 of the General Terms and Conditions to allow a shipper four hours to take action to comply with an OFO before the shipper is subject to an OFO penalty and clarifies that Southwest will accommodate shipper's nomination changes to comply with an OFO.

Southwest states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32439 Filed 12–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–17–000]

Transcontinental Gas Pipe Line Corporation; Notice of Technical Conference

December 9, 1999.

In the Commission's order issued on November 12, 1999,[1] the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Thursday, January 6, 2000, at 10 am, in a room to

[1] 89 FERC ¶ 61,167 (1999).

be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32438 Filed 12–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–31–000, et al.]

Southhaven Power, LLC, et al.; Electric Rate and Corporate Regulation Filings

December 8, 1999.

Take notice that the following filings have been made with the Commission:

1. Southaven Power, LLC

[Docket No. EG00–31–000]

Take notice that on December 1, 1999, Southaven Power, LLC filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935. The applicant is a limited liability company organized under the laws of the State of Delaware that is engaged directly and exclusively in developing, owning, and operating a gas-fired 810 MW (summer rated) combined-cycle power plant in Southaven, Mississippi, which will be an eligible facility.

Comment date: December 29, 1999, 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. Fresno Cogeneration Partners, L.P.

[Docket No. EG00–32–000]

Take notice that on December 1, 1999, Fresno Cogeneration Partners, L.P., a California limited partnership (Applicant), with its principal executive office at 650 Bercut Drive, Suite C, Sacramento, California 95814, 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.

Applicant owns and operates a 25 MW (net) gas fired electrical generating facility located near San Joaquin, California in Fresno County. This facility is certified with the Commission as a ''qualifying facility'' pursuant to PURPA. Applicant will be engaged directly and exclusively in the business of owning and operating eligible facilities and selling electric energy at wholesale.

Comment date: December 29, 1999, 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. Black River Power, LLC

[Docket No. EG00–33–000]

Take notice that on December 1, 1999, Black River Power, LLC (Applicant) 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 and Section 32 of the Public Utility Holding Company Act of 1935, as amended.

Applicant, a New York limited liability company, is a wholly-owned special purpose subsidiary of Jones Capital Corporation, a Delaware corporation. Following the purchase by an unrelated third party of the Fort Drum Cogeneration Project (the Facility) from its current owner, Black River Limited Partnership (BRLP), Applicant will lease the Facility from the third party purchaser and will be the sole operator of the Facility. Applicant will also sell at wholesale the electric energy that the Facility generates. BRLP will transfer to Applicant all operating rights, permits, easements and a ground lease.

The Facility, a topping-cycle cogeneration project located at the Fort Drum Army Base near Watertown, New York, is currently a Commission-certified qualifying facility (QF). The Facility currently consists of three multi-fuel (coal, petroleum coke and wood chips) fired circulating fluidized bed boilers, an extraction/condensing steam turbine generator with a net electrical capacity of approximately 50 MW and associated transmission components interconnecting the Facility with the grid. When operation without QF status begins, the Facility will also include three diesel engine generators that are located at the Facility site and have been used for back-up power, but had not previously been part of the QF. Each of the three distillate oil-fired engine generators has a net electrical capacity of one megawatt. Additionally, Applicant may install an additional steam turbine that would utilize for power generation the steam that has previously been extracted for useful thermal energy output. If this turbine is installed, the Facility's total net electric capacity would be 60 MW, including three MW of net capacity from the diesel units. Due to termination of the thermal energy contract by the U.S. Army, the Facility will cease to be a QF after December 31, 1999. Applicant requests that the Commission issue its determination of EWG status to the Applicant as expeditiously as possible so that Applicant is able to engage in permitted transactions as an EWG on Jan. 1, 2000.

Copies of the application have been served upon the New York Public Service Commission, and the Securities and Exchange Commission.

Comment date: December 29, 1999, 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. National Fuel Resources, Inc., NFR Power, Inc. and Statoil Energy Trading, Inc.

[Docket Nos. ER95–1374–017, ER96–1122–014 and ER94–964–024]

Take notice that on December 1, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

5. Northrop Grumman Corporation

[Docket No. ER96–2957–012]

Take notice that on December 2, 1999, Northrop Grumman Corporation filed a quarterly report for information only.

6. Dynegy Power Marketing, Inc.

[Docket No. ER99–4160–001]

Take notice that on December 2, 1999, Dynegy Power Marketing, Inc. filed their quarterly report for the quarter ending September 30, 1999, for information only.

7. Consumers Energy Company

[Docket No. ER00–343–000]

Take notice that on December 1, 1999, Consumers Energy Company filed quarterly daily market-based wholesale sales to PECo Energy Company during July and August that were erroneously not included in Consumers Energy's quarterly report for the quarter ending September 30, 1999.

Comment date: December 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Puget Sound Energy, Inc.

[Docket No. ER00–663–000]

Take notice that on November 30, 1999, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Long-Term Firm Point-To-Point Transmission

Service with the United States of America Department of Energy acting by and through the Bonneville Power Administration (Bonneville), as Transmission Customer. (Receiving party: Georgia Pacific West, Inc.)

A copy of the filing was served upon Bonneville.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Puget Sound Energy, Inc.

[Docket No. ER00–664–000]

Take notice that on November 30, 1999, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Long-Term Firm Point-To-Point Transmission Service with the United States of America Department of Energy acting by and through the Bonneville Power Administration (Bonneville), as Transmission Customer. (Receiving Party: City of Blaine)

A copy of the filing was served upon Bonneville.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Puget Sound Energy, Inc.

[Docket No. ER00–665–000]

Take notice that on November 30, 1999, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Long-Term Firm Point-To-Point Transmission Service with the United States of America Department of Energy acting by and through the Bonneville Power Administration (Bonneville), as Transmission Customer. (Receiving Party: Public Utility District No. 1 of Kittitas County, Washington)

A copy of the filing was served upon Bonneville.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Puget Sound Energy, Inc.

[Docket No. ER00–666–000]

Take notice that on November 30, 1999, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Long-Term Firm Point-To-Point Transmission Service with the United States of America Department of Energy acting by and through the Bonneville Power Administration (Bonneville), as Transmission Customer. (Receiving party: Bonneville Power Administration)

A copy of the filing was served upon Bonneville.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Puget Sound Energy, Inc.

[Docket No. ER00–667–000]

Take notice that on November 30, 1999, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Long-Term Firm Point-To-Point Transmission Service with the United States of America Department of Energy acting by and through the Bonneville Power Administration (Bonneville), as Transmission Customer. (Receiving Party: City of Sumas)

A copy of the filing was served upon Bonneville.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Puget Sound Energy, Inc.

[Docket No. ER00–668–000]

Take notice that on November 30, 1999, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Short-Term Firm Point-To-Point Transmission Service with the United States of America Department of Energy acting by and through the Bonneville Power Administration (Bonneville), as Transmission Customer. (Receiving Party: Tanner Electric Cooperative, Point of Delivery: North Bend)

A copy of the filing was served upon Bonneville.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Puget Sound Energy, Inc.

[Docket No. ER00–669–000]

Take notice that on November 30, 1999, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Long-Term Firm Point-To-Point Transmission Service with the United States of America Department of Energy acting by and through the Bonneville Power Administration (Bonneville), as Transmission Customer. (Receiving Party: Tanner Electric Cooperative, Point of Delivery: Luhr Beach)

A copy of the filing was served upon Bonneville.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Puget Sound Energy, Inc.

[Docket No. ER00–670–000]

Take notice that on November 30, 1999, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Long-Term Firm Point-To-Point Transmission Service with the United States of America Department of Energy acting by and through the Bonneville Power Administration (Bonneville), as Transmission Customer. (Receiving Party: Tanner Electric Cooperative, Point of Delivery: Ames Lake)

A copy of the filing was served upon Bonneville.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Puget Sound Energy, Inc.

[Docket No. ER00–671–000]

Take notice that on November 30, 1999, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing an Interconnection Agreement with the City of Sumas, Washington (Sumas).

A copy of the filing was served upon Sumas.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Puget Sound Energy, Inc.

[Docket No. ER00–672–000]

Take notice that on November 30, 1999, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing an Interconnection Agreement with Public Utility District No. 1 of Kittitas County, Washington (Kittitas PUD).

A copy of the filing was served upon Kittitas PUD.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Puget Sound Energy, Inc.

[Docket No. ER00–673–000]

Take notice that on November 30, 1999, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing an Interconnection Agreement with the United States of America Department of Energy acting by and through the Bonneville Power Administration (Bonneville).

A copy of the filing was served upon Bonneville.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Puget Sound Energy, Inc.

[Docket No. ER00–674–000]

Take notice that on November 30, 1999, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing an Interconnection Agreement with the City of Blaine, Washington (Blaine).

A copy of the filing was served upon Blaine.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Puget Sound Energy, Inc.

[Docket No. ER00–675–000]

Take notice that on November 30, 1999, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing an Interconnection Agreement with Georgia-Pacific West, Inc. (Georgia-Pacific).

A copy of the filing was served upon Georgia-Pacific.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Puget Sound Energy, Inc.

[Docket No. ER00–676–000]

Take notice that on November 30, 1999, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing an Interconnection Agreement with Tanner Electric Cooperative (Tanner).

A copy of the filing was served upon Tanner.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Puget Sound Energy, Inc.

[Docket No. ER00–677–000]

Take notice that on November 30, 1999, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing an Interconnection Agreement with Tanner Electric Cooperative (Tanner).

A copy of the filing was served upon Tanner.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Puget Sound Energy, Inc.

[Docket No. ER00–678–000]

Take notice that on November 30, 1999, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing an Interconnection Agreement with Tanner Electric Cooperative (Tanner).

A copy of the filing was served upon Tanner.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Black River Power, LLC

[Docket No. ER00–679–000]

Take notice that on November 30, 1999, Black River Power, LLC (BRP), tendered for filing with the Federal Energy Regulatory Commission a Notice of Succession pursuant to which BRP adopts, ratifies, and makes its own in every respect all applicable rate schedules and supplements thereto, including those rate schedules currently pending before the Commission, of Jones Black River Services, Inc.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. New Century Services, Inc.

[Docket No. ER00–680–000]

Take notice that on November 30, 1999, New Century Services, Inc., on behalf of Public Service Company of Colorado (Public Service), tendered for filing an executed umbrella service agreement between Public Service and Southwestern Public Service Company under Public Service's Rate Schedule for the Sale, Assignment, or Transfer of Transmission Rights.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Southwest Power Pool, Inc.

[Docket No. ER00–681–000]

Take notice that on November 30, 1999, Southwest Power Pool, Inc. (SPP), tendered for filing an executed service agreement for firm point-to-point transmission service under the SPP Tariff with PECO Energy (PCEO).

SPP requests an effective date of November 30, 1999 for this agreement.

Copies of this filing were served upon PECO.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Georgia Power Company

[Docket No. ER00–682–000]

Take notice that on November 30, 1999, Georgia Power Company (Georgia Power), tendered for filing the Interconnection Agreement by and between Tenaska Georgia Partners L.P. (Tenaska Georgia) and Georgia Power (the Agreement). The Agreement permits Monroe Power to interconnect and operate in parallel with the Georgia Power electric system. The Agreement is dated as of October 19, 1999 and shall terminate upon mutual written agreement of the parties.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. American Electric Power Service Corporation

[Docket No. ER00–683–000]

Take notice that on November 30, 1999, the American Electric Power Service Corporation (AEPSC), tendered for filing executed Firm and Non-Firm Point-to-Point Transmission Service Agreements for Consumers Energy Company. These agreements are pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT). The OATT has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after November 1, 1999.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Duquesne Light Company

[Docket No. ER00–684–000]

Take notice that on November 30, 1999, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) executed Service Agreement at Market-Based Rates with Participants in the Ohio Market of the Automated Power Exchange, Inc. (Ohio APX) (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of November 10, 1999.

Copies of this filing were served upon Customer.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Consolidated Edison Company

[Docket No. ER00–685–000 of New York, Inc.

Take notice that on November 30, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to the New York Power Authority (NYPA).

Con Edison states that a copy of this filing has been served by mail upon NYPA.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. Central Hudson Gas & Electric Corporation

[Docket Nos. ER97–1523–000, OA97–470–000 and ER97–4234–000]

Take notice that the Notice of Filing issued on November 26, 1999 in the above-referenced proceedings should be rescinded.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–32430 Filed 12–14–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2588–004 Wisconsin]

City of Kaukauna; Notice of Availability of Draft Environmental Assessment

December 9, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the existing Little Chute Hydroelectric Project located on the Fox River in Outagamie County, Wisconsin, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the project and has concluded that approval of the project, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE, Washington, DC 20426. The DEA may also be viewed on the web at *http://www.ferc.fed.us/online/rims.htm.* Please call (202) 208–2222 for assistance.

Any comments should be filed within 45 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Room 1–A, Washington, DC 20426. Please affix ''Little Chute Hydroelectric Project No. 2588–004'' to all comments. For further information, contact Steve Kartalia at (202) 219–2942 or by e-mail at stephen.kartalia@ferc.fed.us.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32435 Filed 12–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2233]

Willamette Falls Hydroelectric Project, Portland General Electric Company, and Smurfit Newsprint Corporation; Notice of Scoping Meetings Pursuant to the National Environmental Policy Act of 1969 for an Applicant Prepared Environmental Assessment

December 9, 1999.

The Commission's regulations at Section 4.34 allow applicants the option of preparing their own Environmental Assessment (EA) for hydropower projects, and filing the EA with their application as part of an alternative licensing procedure. On December 10, 1999, the Commission approved the use of an alternative licensing procedure in the preparation of a new license application for the Willamette Falls Hydroelectric Project, No. 2233.

The alternative procedures include provisions for the distribution of an initial information package (IIP), and for the cooperative scoping of environmental issues and needed studies. On December 31, 1998, Portland General Electric (PGE) distributed the Willamette Falls Project IIP. Public meetings were held on the IIP on February 17 and February 18, 1999. Several tours of project facilities were conducted during 1999.

PGE intends to distribute Scoping Document 1 (SD1) the week of December 13, 1999. Copies of SD1 can be obtained by calling the PGE hydro licensing department at 503–464–8683 or via the PGE hydro licensing web site located at *http://www.pge-hl.com.* Two public meetings will be held to discuss SD1.

Scoping Meetings

PGE will hold public scoping meetings on January 20, 2000, pursuant to the National Environmental Policy Act (NEPA) of 1969. At the scoping meetings, PGE will: (1) Summarize the environmental issues tentatively identified for analysis in the EA, (2) outline any resources they believe would not require a detailed analysis; (3) identify reasonable alternatives to be addressed in the EA; (4) solicit from the meeting participants all available information, especially quantitative data, on the resources at issue; and (5) encourage statements from experts and the public on issues that should be analyzed in the EA.

Although PGE's intent is to prepare an EA, there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

The times and locations of the scoping meeting are:

Morning Scoping Meeting

January 20, 2000

9 am to 12 pm Two World Trade Center—Rooms A&B, 121 SW Salmon Street, Portland, OR 97204

Evening Scoping Meeting

January 20, 2000

7 pm to 9 pm Oregon City High School Cafeteria, 1306 12th Street, Oregon City, OR 97045

All interested individuals, organizations, and agencies are invited and encouraged to attend any or all of the meetings to assist in identifying and clarifying the scope of environmental issues that should be analyzed in the EA.

Scoping Meeting Procedures

The meetings will be conducted according to the procedures used at Commission scoping meetings. Both scoping meetings will be recorded, and the transcripts will become part of the formal record of the proceedings for this project. Those who choose not to speak during the scoping meetings may instead submit written comments on the project.

Because this meeting will be a NEPA scoping meeting under the APEA process, the Commission does not intend to conduct a NEPA scoping meeting after PGE's application and EA are filed with the Commission. Instead, Commission staff will attend the meetings on January 20, 2000.

Commenting Deadline

Written comments should be mailed or e-mailed to: Mr. David Heintzman, Portland General Electric (3WTC–BRHL), 121 SW Salmon Street, Portland, OR 97204; David__Heintzman@pgn.com

All correspondence should be postmarked no later than March 21, 2000. Comments should show the following caption on the first page: Scoping Comments, Willamette Falls Hydroelectric Project, Project No. 2233. Any comments sent to the Commission must include an original and eight copies and be addressed to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please put the docket number, P–2233, on the first page.

For further information please contact Julie Keil PGE at (503) 464–8864 or John Blair of the Commission at (202) 219–2845.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32434 Filed 12–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Southwestern Power Administration

Integrated System Rate Schedules

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: Pursuant to Sections 301(b) and 302(a) of the Department of Energy Organization Act (Pub. L. 95–91) and Section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s) the Deputy Secretary of the Department of Energy has approved and placed into effect on an interim basis Rate Order No. SWPA–42 which provides the following Integrated System Rate Schedules:

—Rate Schedule P–98C, Wholesale Rates for Hydro Peaking Power
—Rate Schedule NFTS–98C, Wholesale Rates for Non-Federal Transmission Service

FOR FURTHER INFORMATION CONTACT: Mr. Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, Department of Energy, PO Box 1619, Tulsa, OK 74101, (918) 595–6696, *reeves@swpa.gov*.

SUPPLEMENTARY INFORMATION: The FY 1999 Power Repayment Studies for the Integrated System indicate that rates prescribed by Rate Schedules P–98B, Wholesale Rates for Hydro Peaking Power, and NFTS–98B, Wholesale Rates for Non-Federal Transmission Service, are adequate to meet repayment criteria within the plus-or-minus two percent rate adjustment threshold. However, certain aspects of the terms and conditions set forth in the rate schedules need to be revised to expand the Real Power Loss provisions and to more accurately reflect actual regional operating conditions for Spinning and Supplemental Operating Reserves. The names of the rate schedules have been changed from P–98B and NFTS–98B to P–98C and NFTS–98C to reflect that revisions have been made.

Southwestern Power Administration (Southwestern) has followed Title 10, Part 903, Subpart A of the Code of Federal Regulations, ''Procedures for Public Participation in Power and Transmission Rate Adjustments,'' in connection with the minor rate schedule revisions being proposed. The public was advised by notice published in the **Federal Register** (64 FR 49483), September 13, 1999, of proposed rate schedule changes and of the opportunity to participate in a 30-day public comment period. Written comments on the proposed rate schedule changes were due on or before October 13, 1999. No written comments were received. In addition, several informal meetings were held with customers and interested parties to discuss the proposed changes.

Information regarding these rate schedule revisions, including supporting material, is available for public review and comment in the offices of Southwestern Power Administration, One West Third Street, Suite 1400, Tulsa, Oklahoma 74103.

Following review of Southwestern's proposal within the Department of Energy, I hereby approve Rate Order No. SWPA–42 on an interim basis, through

September 30, 2001, or until confirmed and approved on a final basis by the Federal Energy Regulatory Commission.

Dated: December 2, 1999.

T.J. Glauthier,

Deputy Secretary.

Order Confirming, Approving and Placing Revised Power Rate Schedules in Effect on an Interim Basis (January 1, 2000)

[Rate Order, No. SWPA–42]

Pursuant to Sections 301(b) and 302(a) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, for the Southwestern Power Administration (Southwestern) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective December 14, 1983, 48 FR 55664, the Secretary of Energy delegated to the Federal Energy Regulatory Commission (FERC) on an exclusive basis the authority to confirm, approve and place in effect on a final basis, or to disapprove power and transmission rates. This rate order is issued by the Secretary of Energy pursuant to the Department of Energy Organization Act, Public Law 95–91, as noted above.

Background

In September 1999, Southwestern completed its review of the adequacy of the current rate schedules for the Integrated System and finalized its FY 1999 Power Repayment The FY 1999 Power Repayment for the Integrated System indicates that rates prescribed by Rate Schedules P–98B, Wholesale Rates for Hydro Peaking Power, and NFTS–98B, Wholesale Rates for Non-Federal Transmission Service, are sufficient to meet repayment criteria within the plus-or-minus 2 percent rate adjustment threshold. However, certain aspects of the terms and conditions set forth in the rate schedules need to be revised to expand the Real Power Loss provisions and to more accurately reflect actual regional operating conditions for Spinning and Supplemental Operating Reserves. Since the proposed changes to the rate schedules are associated with the terms and conditions of service, the net results of the 1997 Integrated System Power Repayment Studies, which was the basis for the existing rate schedules, will not be altered. The designations of the aforementioned rate schedules have been changed from P–98B and NFTS–98B to P–98C and NFTS–98C, respectively, to reflect the fact that revisions have been made.

Title 10, Part 903 Subpart A, of the Code of Federal Regulations, ''Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions'' (Part 903) have been followed in connection with the proposed revisions to the rate schedules. An opportunity for customers and other interested members of the public to review and comment on the proposed Rate Schedules P–98C and NFTS–98C was announced by notice published in the **Federal Register** (64 FR 49483), September 13, 1999, with written comments due on or before October 13, 1999. In addition, Southwestern held informal meetings with customers to discuss proposed changes and to provide opportunity for input in the development of these

changes. No written comments were received.

Discussion

Rate Schedule P–98C applies to wholesale customers purchasing hydro peaking power and peaking energy from the Integrated System. This rate schedule is designed for the sale of Federal power and energy. Provisions in the rate schedule are being revised to reflect minor corrections and modifications for the purpose of clarification. Also, terms and conditions regarding specific provisions of this rate schedule are being expanded to address customer or operational concerns. Southwestern proposes to amend the terms and conditions for Real Power Losses by adding a provision for the annual election to self-provide Real Power Losses, and to broaden the application of rates for the Spinning and Supplemental Operating Reserve ancillary services to apply to deliveries of non-Federal power and energy generated by resources located within Southwestern's Control Area and for all deliveries of Hydro Peaking Power and associated energy. The rates for the Spinning and Supplemental Operating Reserve ancillary services will be reduced due to the increase in billing units that result from the expanded application. However, the revenue requirements will remain unchanged.

The existing rate schedule (P–98B) determined the rate for Real Power Losses based upon the average actual costs incurred by Southwestern for the purchase of energy to replace Real Power Losses during the most recent twelve-month period. Southwestern has revised this provision to use the average actual purchase costs during the previous fiscal year (October through September) and to post the rate for Real Power Losses on Southwestern's OASIS by November 1 of each year, with an effective date of January 1 of each calendar year. The timeframe for implementing the annual loss rate has been revised to accommodate the annual election for self-provision of Real Power Losses. Southwestern proposes to implement the revised rate for Real Power Losses effective January 1, 2000. Customers who decide to exercise their election for self-provision of Real Power Losses initially must do so by January 1, 2000, with implementation beginning February 1, 2000. Thereafter, the annual election for self-provision is required to be exercised by December 1 of the prior calendar year, for implementation beginning January 1 of each calendar year.

The provisions for the Spinning and Supplemental Operating Reserves ancillary services have been broadened to include application to deliveries of non-Federal power and energy generated by resources located within Southwestern's Control Area. In addition, these two ancillary services will also apply to all deliveries of Hydro Peaking Power and associated energy, from and within Southwestern's Control Area. This change in application is needed to accommodate Southwestern's obligation, as a member of the regional reliability council in which it operates, to supply Spinning and Supplemental Operating Reserves for all power generated within Southwestern's Control Area.

Rate Schedule NFTS–98C applies to wholesale customers purchasing Non-Federal Point-to-Point and Network Integration Transmission Service. Both the Real Power Losses and the Spinning and Supplemental Reserve ancillary services have been revised in the same manner as in Rate Schedule P–98C, noted above.

Comments and Responses

Southwestern has received no formal written comments regarding these Rate Schedule changes.

Other Issues

There were no other issues raised during the informal meetings or during the formal public participation period.

Administrator's Certification

The revised rate schedules will repay all costs of the Integrated System including amortization of the power investment consistent with the provisions of Department of Energy Order No. RA 6120.2. In accordance with Section 1 of Delegation Order No. 0204–108, as amended November 10, 1993, 58 FR 59717, and Section 5 of the Flood Control Act of 1944, the Administrator has determined that the proposed System Rate Schedules are consistent with applicable law and the lowest possible rates consistent with sound business principles.

Environment

No additional evaluation of the environmental impact of the proposed rate schedule changes was conducted since no change has been made to the currently-approved System rates which were determined to fall within the class of actions that are categorically excluded from the requirements of preparing either an Environmental Impact Statement or an Environmental Assessment.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm, approve and place in effect on an interim basis, effective January 1, 2000, the Southwestern Integrated System Rate Schedules P–98C and NFTS–98C which shall remain in effect on an interim basis through September 30, 2001, or until the FERC confirms and approves the rates on a final basis.

Dated: December 2, 1999.

T.J. Glauthier,

Deputy Secretary.

[FR Doc. 99–32468 Filed 12–14–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Boulder Canyon Project-Base Charge and Rates

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of base charge and rates.

SUMMARY: Notice is given of the confirmation and approval by the Deputy Secretary of the Department of Energy (DOE) placing the Base Charge and Rates for the Boulder Canyon Project (BCP) firm power into effect for the fifth rate year under the current rate methodology pursuant to Rate Schedule BCP–F5 as approved by the Federal Energy Regulatory Commission (FERC) on April 19, 1996 (Rate Order No. WAPA–70). The Base Charge will provide sufficient revenue to pay all annual costs, including interest expense, and repayment of required investment within the allowable period.

DATES: The Base Charge will be placed into effect on December 1, 1999, and will be in effect through September 30, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Montoya, Power Marketing Manager, Western Area Power Administration, Desert Southwest Customer Service Region, 615 South 43rd Avenue, Phoenix, AZ 85009–5313, (602) 352–2789, or

SUPPLEMENTARY INFORMATION: The Deputy Secretary of Energy approved the existing Base Charge for firm power service on September 19, 1997. The existing Base Charge was calculated in accordance with the methodology approved under Rate Order WAPA–70. In accordance with Section 13.13 of the BCP Implementation Agreement, the rate methodology and calculated rates for the first rate year and each fifth fiscal

year (FY) thereafter shall become effective on an interim basis upon approval by the Deputy Secretary of Energy, subject to final approval by FERC. The rates for the second, third, and fourth FYS for the BCP–F5 became effective on a final basis upon approval by the Deputy Secretary. The rates for the fifth FY (FY 2000) shall become effective on a final basis upon approval by the Deputy Secretary. The FY 2000 Base Charge represents the charges for the fifth FY since FERC approval of the current rate methodology.

The Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR part 903, have been followed by Western in determining the Base Charge. The FY 2000 Base Charge for BCP firm power is based on an Annual Revenue Requirement of $46,145,334. The Base Charge consists of an energy dollar of $23,860,434.50, a forecasted energy rate of 4.59 mills/kWh, a capacity dollar of $22,284,899.50, and a forecasted capacity rate of $0.95 per kilowattmonth (kWmonth).

The following summarizes the steps taken by Western to ensure involvement of all interested parties in the determination of the Base Charge and Rates:

1. The proposed rate adjustment was initiated on February 22, 1999, when a letter announcing an informal customer meeting was mailed to all BCP Contractors. The informal meeting was held on March 9, 1999, in Phoenix, Arizona. At this informal meeting, Western explained the rationale for the rate adjustment, presented the FY 2000 Base Charge and Forecast Capacity and Energy Rates, and answered questions.

2. A **Federal Register** notice was published on March 24, 1999 (64 FR 14227), officially announcing the proposed rates for BCP, initiating the public consultation and comment period, and announcing the public information forum and public comment forum.

3. On March 24, 1999, letters were mailed from Western's Desert Southwest Regional Office to all BCP Contractors and interested parties, transmitting the **Federal Register** notice of March 24, 1999 (64 FR 14227), and announcing the times and locations for the two public forums.

4. On April 13, 1999, letters were mailed from Western's Desert Southwest Regional Office to all BCP Contractors and interested parties, transmitting a package of updated information related to the FY 2000 Base Charge and Forecast Capacity and Forecast Energy Rates compiled since the March 9, 1999, informal customer meeting.

5. On April 21, 1999, beginning at 10 a.m., a public information forum was held at Western's Desert Southwest Regional Office in Phoenix, Arizona. At the public information forum, Western provided detailed explanations of the proposed FY 2000 Base Charge and Forecast Capacity and Forecast Energy Rates for BCP, identified the issues that could change the proposed FY 2000 Base Charge and Forecast Capacity and Forecast Energy Rates, and answered questions. A rate information handout was provided at the forum.

6. On May 18, 1999, letters were mailed from Western's Desert Southwest Regional Office to all BCP Contractors and interested parties, transmitting a package of responses to data requests and questions from the April 21, 1999, public information forum.

7. On June 2, 1999, beginning at 10:30 a.m., a public comment forum was held at Western's Desert Southwest Regional Office in Phoenix, Arizona. A handout containing information regarding the updated FY 2000 Base Charge and Forecast Capacity and Forecast Energy Rates was provided. After providing this information, Western gave the public an opportunity to comment for the record. Three representatives made oral comments.

8. Two comment letters were received during the 90-day consultation and comment period. The consultation and comment period ended June 22, 1999. All formally submitted comments have been considered in developing the Base Charge for FY 2000. Written comments were received from the following sources:

Irrigation and Electrical Districts Association of Arizona (Arizona)
Metropolitan Water District of Southern California (California)

The comments and responses, paraphrased for brevity, are presented below:

Civil Service Retirement Costs and Post-Retirement Health and Life Insurance Benefits

Comment: Western received comments related to Western's lack of authority to collect the unfunded portion of the Civil Service Retirement Costs and Post-Retirement Health and Life Insurance Benefits in this rate process. Specifically, the Contractors assert that funds collected for these costs for the BCP would have to be deposited into the Colorado River Dam Fund (CRDF) and could not be transferred to a general fund account managed by the Office of Personnel Management. Accordingly, the Contractors believe that collection of these costs is inappropriate. The Contractors are also concerned that proper tracking of these funds is also needed to ensure they are being used only for BCP and are not lost in a general fund.

Response: Under a legal opinion provided by the General Counsel of the DOE by memorandum dated July 1, 1998, the Power Marketing Administrations (PMAs) have the authority to collect, through the rates, the full costs of the Retirement Benefits. In addition, the FERC has issued at least two orders approving the inclusion of such costs in PMA rates; *Western Area Power Administration* (Intertie Project), 87 FERC ¶ 61,346, at 62,337–62,338 (1999), and *Southeastern Power Administration,* 86 FERC ¶ 61,195, at 61,681 (1999). Based on the FY 1999 data currently available, a total of $1.3 million is expected to be collected for these retirement costs for FY 2000, which represents approximately 3 percent of the BCP revenue requirement. Western has previously recovered $1.3 million for Civil Service Retirement Costs and Post-Retirement Health and Life Insurance Benefits costs in FY 1998 and anticipates recovering another $1.3 million in FY 1999. Under the provisions of the Boulder Canyon Project Adjustment Act, 43 U.S.C. 618, *et seq.*, all receipts from the BCP shall be paid into the CRDF and are available for defraying the costs of operation. Western will continue to deposit these funds into the CRDF in compliance with these authorities.

Visitor Center

Comment: A Contractor continues to be concerned that the Visitor Center net revenues are not yet sufficient to fund the agreed-upon 50 percent amortization of the Visitor Center investment.

Response: The Bureau of Reclamation is currently working toward providing the detail necessary to show Government and Contractor responsibility for repayment of the final cost of the Visitor Facilities as required by the Implementation Agreement. Updated final estimated cost information was presented at the August 1999 Coordination Meeting. There has been a dramatic increase in the amount of revenue collected in recent years. Revenues collected *in excess* of expenses totaled $900,000 in FY 1996, $2.4 million in FY 1997, and $5.2 million in FY 1998. Reclamation will continue to research and implement new revenue proposals, and carefully monitor expenses, with a goal of recovering 50 percent of the Visitor

Facilities investment with interest. Western will continue to include these revenues in the power repayment study as they are received.

Joint Planning Study Costs

Comment: A Contractor continues to address concern for costs incurred under the Joint Planning Agreement (JPA) for future transmission and generation project studies, which the contractor asserts are being allocated inappropriately to the BCP Contractors. The Contractor believes these study costs, in addition to the costs required for any transmission upgrades to the system (generator addition, transmission interconnection, etc.), should be charged to the project sponsors or included in Western's Open Access Tariff (OAT) rates. The Contractor also states whether the study costs are charged to the project sponsors or included in the OAT rates, the JPA study costs to date should be tracked and reimbursed to the BCP Contractors.

Response: Western agrees that study work which is project specific to a new line in Western's system, or an interconnection to Western's system, should and will be charged to the entity requesting the interconnection or to the Project (Parker-Davis, Intertie, Boulder Canyon, Colorado River Storage Project) which is being upgraded. Study work charges for the Mead Fault 230-kV duty studies will be charged to the projects shown to impact the system causing the upgrade. After completion of the contracts with those entities causing the impact, Western will be able to move the charges from the BCP, and other Projects, to the entities causing the needed upgrade.

If a project is not interconnecting to Western's system but could potentially cause an impact from one or more busses away, Western will have to perform studies and participate in study groups to assure our needs are considered and met. Often these situations do not enable Western to pass along study costs to the project. In these cases the costs are applied to those Projects on Western's system that are most impacted.

If studies work is of a general nature, Western reserves the authority to assign costs to the Project influenced by the project involved. Work on the California Independent System Operator, the Nevada Independent Scheduling Administrator, and the Arizona Independent Scheduling Administrator is of a general nature. BCP will receive charges from work on these efforts since they pertain to the use of Hoover in their operations, as well as other transmission and generation issues. BCP's participation is 15 percent of the total cost of the efforts. Western's efforts in the Western Systems Coordinating Council and other reliability forums will also be charged based on the distribution formula for general efforts. In recent years, due to deregulation and significant systems changes, Western has been required to expend an increasing effort to address and protect system reliability.

Finally, the Contractor seems to have misconstrued the nature of the JPA. The JPA is a forum to review projects being considered by JPA signatories to coordinate and collaborate. Studies are performed on upgrades or new initiatives, charged to the appropriate Project, presented and discussed in the JPA committee meetings, and finalized in the annual JPA meeting before becoming a part of Western's system plans. The JPA has also been used as a forum to keep JPA signatories and other interested parties aware of activities impacting the systems.

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. By subsequent Order effective April 15, 1999, the Secretary rescinded all delegations of authority to the Deputy Secretary, whether contained in Delegation Orders, Departmental Directives, or elsewhere, concerning the Department's Power Marketing Administrations, including, but not limited to, authority delegated or affirmed in Delegation Order No. 0204–108, as amended. However, on November 24, 1999, in Delegation Order No. 0204–172 the Secretary reinstate the authority delegated to the Deputy Secretary in Amendment No. 3 to Delegation Order No. 0204–108, which had been rescinded by his April 15, 1999, Order.

These charges and rates are established pursuant to section 302(a) of the DOE Organization Act, 42 U.S.C. 7152(a), through which the power marketing functions of the Secretary of the Interior and Reclamation under the Reclamation Act of 1902, 43 U.S.C. 371, *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and other acts specifically applicable to the project system involved, were transferred to and vested in the Secretary.

Dated: December 3, 1999.

T.J. Glauthier,

Deputy Secretary.

[FR Doc. 99–32411 Filed 12–14–99; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6509–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; A Pilot Study of Children's Total Exposure to Persistent Pesticides and Other Persistent Organic Pollutants (CTEPP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: A Pilot Study of Children's Total Exposure to Persistent Pesticides and Other Persistent Organic Pollutants, EPA ICR Number 1892.02. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 14, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1892.02. For technical information about the collection contact Gary Evans at (919) 541–3124.

SUPPLEMENTARY INFORMATION:

Title: A Pilot Study of Children's Total Exposure to Persistent Pesticides and Other Persistent Organic Pollutants, EPA ICR Number 1892.02. This is a new collection.

Abstract: The research study, ''A Pilot Study of Children's Total Exposure to Persistent Pesticides and Other Persistent Organic Pollutants,'' (CTEPP) is a pilot-scale project involving about 260 children, which investigates the possible exposures that young children may have to common contaminants in their everyday surroundings. These

contaminants include several pesticides, phenols, polychlorinated biphenyls, polycyclic aromatic hydrocarbons, some of which are suspected of being endocrine disrupters. The targeted compounds are persistent in the indoor and sometimes the outdoor environments, so that very low levels may exist in the children's surrounding microenvironments and provide a source of chronic, non-acute exposure. The aim of CTEPP is to obtain scientifically valid data and statistically robust relationships describing the exposures of a subpopulation of young children, between the ages of 18 months and 5 years, in several North Carolina and Ohio counties. The CTEPP data will be used to evaluate and refine existing exposure models so that improved, realistic estimates of exposure can be made, and to identify the important exposure pathways.

The CTEPP study has direct practical utility to the Food Quality and Protection Act of 1996 (FQPA). It will provide critical data on aggregate chronic, sub-acute pesticide exposures and pathways for approximately 260 children in several microenvironments. It will allow evaluation and refinement of the approaches and models used for estimating exposure, and it will facilitate the identification of the important exposure pathways. The objectives of CTEPP are thus threefold: (1) To measure the total exposures at sub-acute levels of a small set of preschool children in several NC and OH counties to a suite of persistent pesticides and other persistent organic pollutants that they may encounter in their everyday environments; (2) to evaluate and refine exposure models using real, physical data; and (3) to apportion the exposure pathways and identify the important exposure media, so that ultimately children's exposures can be lowered. Therefore, CTEPP investigates the total exposures to persistent organic compounds in the environment of a group of pre-elementary school children through the ingestion, inhalation, and dermal absorption pathways, in several non-occupational settings, through multiple environmental media.

Responses to the collection of information are voluntary. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 2/1/1999 (64 FR 4868); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 6.3 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Parents, day care or pre-school operators, children.

Estimated Number of Respondents: 312.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 657 hours.

Estimated Total Annualized Cost Burden (non-labor costs): $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1892.02 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 401 M Street, SW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: December 10, 1999.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 99–32519 Filed 12–14–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6509–2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; National Health Protection Survey of Beaches

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: National Health Protection Survey of Beaches, EPA ICR Number 1814.02, OMB Control Number 2040–0189, expiration date 02/29/2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 14, 2000.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740, by email at farmer.sandy@epa.gov, or download a copy off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1814.02.

SUPPLEMENTARY INFORMATION:

Title: National Health Protection Survey of Beaches (OMB Control No. 2040–0189; EPA ICR No. 1814.02; expiring 02/29/00). This is a request for an extension of a currently approved collection.

Abstract: Bacterial and other microbiological contaminants continue to pose potentially serious human health problems for the Nation's recreational waters, including bathing beaches. These adverse effects have been one of EPA's long-standing concerns. They are directly related to such Clean Water Act responsibilities as water quality standards and surface water quality, and to the Agency's efforts to ensure that the waters of the United States are ''fishable'' and ''swimmable.'' In 1986, EPA formally issued a revision to its bacteriological ambient water quality criteria recommendations to protect persons participating in body contact recreation. Since that time, few states have adopted the revised criteria, and the use of the bacterial criteria has varied greatly from one location to the next. In addition, recent studies have confirmed the adverse health effects resulting from

bathing in contaminated waters. Therefore, water quality in bathing beach areas is a critical concern to EPA.

EPA believes there is a need to improve the overall quality and availability of public information about health protection activities at beaches, which include, but are not limited to, water quality standards, monitoring and assessment activities, and beach closures. Many organizations share responsibility for these activities. Consequently, EPA's Office of Water will conduct an annual ''beach'' survey which will be sent to environmental health officials from State, tribal, county, and city agencies, as well as representatives from various interest groups. It will obtain and verify information on the location and condition of swimming beaches and the agencies and persons responsible for maintaining and issuing advisories or closings for those beaches at freshwater sites (the Great Lakes and others) and saltwater (estuarine and coastal) sites around the Nation. Responses to the questionnaire (either on paper or electronically via the Internet) are required to determine compliance with water quality standards, to assess public health risks, and to determine what steps EPA should take next, if any. Completion of the questionnaire and map marking will be voluntary.

EPA will assemble the information (maps and questionnaire responses) into electronic database and graphic formats that can be readily analyzed and shared with responsible parties (*e.g.*, EPA program and regional offices, other Federal, state, tribal, county, and city agencies), as well as the public. The nationwide collection of information is being conducted in phases over three years, with an average estimated number of respondents of 533 per year. When the survey is fully implemented, it is estimated that 750 respondents per year will be involved. The estimated annual cost for the survey per respondent is anticipated to decrease each year, since respondents will only be requested to provide information that has changed during the year.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 9/10/99 (64 FR 49180); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2.4 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: County, public health, and environmental protection agencies.

Estimated Number of Respondents: 533.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 1,267.

Estimated Total Annualized Cost Burden (non-labor costs): $1,201.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1814.02 and OMB Control No. 2040–0189 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 401 M Street, SW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: December 8, 1999.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 99–32520 Filed 12–14–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6509–3]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Contractor Cumulative Claim and Reconciliation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Contractor Cumulative Claim and Reconciliation, EPA ICR Number 0246.07, OMB Control Number 2030–0016, expiration date March 31, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 14, 2000.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 0246.07.

SUPPLEMENTARY INFORMATION:

Title: Contractor Cumulative Claim and Reconciliation (OMB Control No. 2030–0016; EPA ICR No. 0246.07, expiring 3/31/2000). This is a request for extension of a currently approved collection.

Abstract: At the completion of a cost reimbursement contract, contractors report final costs incurred, including direct labor, materials, supplies, equipment, and other direct charges, subcontract costs, consultant fees, indirect costs, and fees. Contractors report this information on EPA Form 1900–10. EPA uses this information to reconcile the contractor's costs, and determine proper reimbursement under the contract. Establishment of the final costs and fee is necessary to close out the contract, and contractor responses are required prior to final payment under the contract.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter

15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on August 9, 1999 (64 FR 43177); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 40 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Large and small businesses holding cost type contracts with EPA.

Estimated Number of Respondents: 65.

Frequency of Response: Once, at contract completion.

Estimated Total Annual Hour Burden: 43 hours.

Estimated Total Annualized Capital, Operating/Maintenance Cost Burden: $0 (zero).

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0246.07 and OMB Control No. 2030–0016 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 401 M Street, SW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: December 8, 1999.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 99–32521 Filed 12–14–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00636; FRL–6399–1]

Prior Informed Consent for Chemicals in International Trade; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting and availability of document.

SUMMARY: EPA announces a public meeting to review and discuss the provisions of the Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, and the issues which will be discussed at the first technical meeting of the Interim Chemical Review Committee (ICRC). The PIC Agreement creates an international approach to the export of banned or severely restricted chemicals and pesticides among countries who are signatories of the Agreement. The U.S. is a signatory, and an EPA delegate will represent the U.S. on the ICRC. The ICRC is responsible for developing the implementation of the Agreement. A document entitled, ''Guidance to the U.S. Representative to the Interim Chemical Review Committee,'' has been prepared to guide and inform the public discussion at the meeting. Comments are invited on this document.

DATES: The meeting will be held on January 19, 2000, from 2 p.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, Rm. 1126, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Requests to participate may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, your request must identify docket control number OPP–00636 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Cathleen M. Barnes, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–7101; fax number: (703) 308–1850; e-mail address: barnes.cathleen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who manufacture, import, export, or use pesticides and industrial chemicals, and those persons who have interest in the topic of international trade in products that have been designated as ''banned or severely restricted pesticides and industrial chemicals.'' Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**-Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. Alternatively, you may wish to review materials provided at http://www.epa.gov/oppfead1/international/ which also has links to the PIC Home Page maintained by the Interim Secretariat for the PIC Procedure. You may link directly to the PIC Home Page of the U.N. Food Agriculture Organization at http://www.fao.org/waicent/FaoInfo/Agricult/AGP/AGPP/Pesticid/PIC/pichome.htm.

2. *In person.* The Agency has established an official record for this meeting under docket control number OPP–00636. The official record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to the January 19, 2000 meeting, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal

holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting through the mail, in person, or electronically. Do not submit any information in your request that is considered CBI. Your request must be received by EPA on or before January 5, 2000. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00636 in the subject line on the first page of your request.

1. *By mail*. You may submit a request to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier*. Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your request electronically by e-mail to: ''opp-docket@epa.gov.'' Do not submit any information electronically that you consider to be CBI. Use WordPerfect 6.1/8.0 or ASCII file format and avoid the use of special characters and any form of encryption. Be sure to identify by docket control number OPP–00636. You may also file a request online at many Federal Depository Libraries.

IV. Background on PIC Agreement

The U.S. is a signatory to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, commonly known as PIC. Under this Agreement, countries nominate substances which have been banned or severely restricted, and once approved for inclusion in the Procedure, these substances will be subject to additional controls in international trade. The PIC creates a system to ensure that countries importing particularly dangerous chemicals and pesticides fully understand the risks posed by the use of these substances, and can make informed decisions about their import. This is primarily achieved through the sharing of information about control actions and the risks which prompted them. PIC also establishes a mechanism which enables countries to refuse import of listed substances, and creates a responsibility for exporting countries to prohibit export to that country. It also establishes other information exchange provisions which include: export notifications, material data safety sheets, and labeling. An Interim Chemical Review Committee, commonly known as ICRC, has been established to provide technical, expert advice and recommendations for implementing parts of the Interim Procedure. The Environmental Protection Agency is providing a representative to the ICRC who will reflect the regulatory approaches of the U.S. in the ICRC. The ICRC will review technical and regulatory information and develop recommendations regarding the inclusion of chemicals in the Interim PIC Procedures. The Agreement will come into force when 50 countries or regional economic integration organizations have ratified it. Until that time, the Agreement is being operated as a voluntary Interim Procedure.

List of Subjects

Environmental protection.

Dated: December 6, 1999.

Anne E. Lindsay,

Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 99–32384 Filed 12–14–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–181071; FRL–6394–2]

Helix; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the North Dakota Department of Agriculture to use the pesticide product Helix, containing the registered active ingredients difenoconazole (CAS No. 119446–68–3), fludioxonil (CAS No. 131341–86–1), and (*R*)-(2,6-dimethylphenyl)-methoxyacetylamino]-propionic acid methyl ester (CAS No. 70630–17–0) and the unregistered active ingredient thiamethoxam to treat up to 2,400,000 pounds of canola seed to control flea beetles. The Applicant proposes the use of a new chemical which has not been registered by the EPA. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments, identified by docket control number OPP–181071, must be received by December 30, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–181071 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Stephen Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: 703–308–9362; fax number: 703–308–5433; e-mail address: schaible.stephen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you petition EPA for emergency exemption under section 18 of FIFRA. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICScodes	Examples of potentially affectedentities
State government	9241	State agencies that petition EPA for section 18 pesticide exemption

This listing 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 the table in this unit could also be regulated. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

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

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

2. *In person*. The Agency has established an official record for this action under docket control number OPP–181071. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–181071 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: ''opp-docket@epa.gov,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–181071. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the proposed rule or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The North Dakota Department of Agriculture has requested the Administrator to issue a specific exemption for the seed treatment use of Helix, containing the active ingredients, difenoconazole, fludioxonil, metalaxyl, and thiamethoxam on canola to control flea beetles. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Applicant asserts that the only product currently registered for seed treatment use on canola to control flea beetles, Gaucho (containing the active ingredient imidacloprid), failed to provide control of flea beetles in 1999 under the severe pest pressure experienced in North Dakota. The Applicant claims that trap counts collected this fall indicate that even more extreme infestations are likely to occur next year. It is claimed that without the seed treatment use of Helix, significant economic losses for canola growers in North Dakota are expected. It is expected the Agency will soon receive additional information

supporting the contention that an emergency condition exists for the remaining states the treated seed is to be shipped.

According to the Applicant, the crucifer flea beetle and the striped flea beetle are significant pests of seedling canola. Flea beetles injure the plants by feeding on leaf tissue, stems and pods. Yield losses of 10% are common in canola when flea beetles are abundant even when the crop in protected with insecticides. It is claimed that over the last 5 years flea beetle pressure has been increasing in the northern-tier states, resulting in significant losses to canola producers in situations where the pest was not adequately controlled. Flea beetles pose the greatest threat to canola seedlings when hot, dry weather conditions occur during emergence. Under these circumstances, flea beetles are very active and can migrate in large numbers to newly emerging canola fields.

The Applicant proposes to make a single application treating canola seed at a rate of 23 fluid ounces of product per 100 pounds of seed. Under the emergency exemption, 2,400,000 lbs. of seed would be treated with Helix; this represents an estimated planting of 400,000 acres of canola in the United States. A total of 552,000 ounces of product would be used, with the use season starting January 1, 1999 and extending through March 1, 2000. Under the requested exemption, seed would be treated in North Dakota (and possibly Idaho, should that state request an exemption) and shipped to Minnesota, Montana, Wisconsin, South Dakota, and Washington.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient) which has not been registered by the EPA. The notice provides an opportunity for public comment on the application.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the North Dakota Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 1, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 99–32184 Filed 12–14–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100152; FRL–6392–4]

Disclosure of Information Obtained Regarding Unreasonable Adverse Effects of Pesticides on the Environment; Class Determination

AGENCY : Environmental Protection Agency (EPA).

ACTION: Notice of Availability.

SUMMARY: This document announces a class determination by EPA that safety and efficacy information submitted under section 6(a)(2) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) is not entitled to confidential treatment. This determination will enable EPA offices to respond more quickly and efficiently to requests for information submitted under section 6(a)(2).

DATES: The class determination took effect upon its issuance, on September 28, 1999.

FOR FURTHER INFORMATION CONTACT: For technical information contact: Kathryn S. Bouve, 6(a)(2) Officer, Office of Pesticide Programs (7502C), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location: Information Services Branch, CM #2, 2d floor, 1921 Jefferson Davis Hwy., Arlington, VA. Telephone: (703) 305–5032; e-mail: *bouve.kate@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are a pesticide registrant, i.e., any person who holds, or ever held, a registration for a pesticide product issued under section 3 or section 24(c) of FIFRA. Potentially affected categories and entities may include but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry ..	32532	Pesticide manufacturing

This listing is not exhaustive, but is a guide to entities likely to be regulated by this action. The North American Industrial Classification System (NAICS) codes will assist you in determining whether this action applies to you. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the FOR FURTHER INFORMATION CONTACT section.

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

1. *Electronically.* You may obtain copies of this document and certain other available support documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**- Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at http://www.epa.gov/homepage/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–100152. The official record consists of the documents specifically referenced in this action and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is 703–305–5805.

3. *Fax on demand.* Using a faxphone call (202) 401-0527 and select item 6045 for a copy of Class Determination 1–99.

III. What Is the Determination Announced in this Document?

On September 28, 1999, EPA issued Class Determination 1–99. In the Class Determination the Agency determined that safety and efficacy information submitted pursuant to FIFRA section 6(a)(2) is not entitled to confidential treatment, and that if such information is submitted to EPA under a claim of business confidentiality it may nonetheless be disclosed to the public, subject to the provisions of FIFRA section 10(g). This determination covers information both currently in the

Agency's possession and submitted in the future.

A. What is Section 6(a)(2) of FIFRA?

On September 19, 1997, EPA published in the **Federal Register** (62 FR 49370) (FRL–5739–1) a rule implementing section 6(a)(2) of FIFRA. This rule is codified at 40 CFR part 159, subpart D. As explained more fully in the 1997 **Federal Register** rule, under FIFRA section 6(a)(2) pesticide registrants are required to submit to EPA reports of adverse effects related to product usage, product defects, or lack of product efficacy, as well as new information derived from scientific studies which pertain to unreasonable adverse effects of pesticides on the environment.

B. What is Safety and Efficacy Information?

Section 10(d)(1) of FIFRA requires disclosure to the public of all information regarding the effects of any registered or previously registered pesticide on any organism or the behavior of any such pesticide in the environment (subject to certain exceptions, discussed in the class determination). EPA has used the term ''safety and efficacy information'' as a label for the information required to be disclosed by section 10(d)(1). Information submitted under section 6(a)(2) is largely safety and efficacy information.

C. What is Section 10(g) of FIFRA?

Section 10(g) protects the proprietary rights of pesticide registrants and applicants in data submitted to support applications for pesticide registration, by limiting disclosure of such data to persons who affirm that they are not, and will not deliver the information to, a business engaged in the production, sale or distribution of pesticide products in countries other than the United States (except when the data submitter has consented to such disclosure). In Class Determination 3–85, Disclosure of Reviews of Pesticide Test Data (50 FR 48833, November 27, 1985), EPA announced its interpretation that section 10(g) applies to information which consists of a complete unpublished report of a study, test, or experiment submitted to EPA by an applicant or registrant under FIFRA, or which consists of excerpts or restatements of any such report which reveal the full methodology and complete results of the study, test, or experiment, and all explanatory information necessary to understand the methodology or interpret the results, and that section 10(g) does not apply to information of a more summary nature.

D. Why has EPA Issued the Class Determination and Published Notice in the Federal Register?

Under EPA confidentiality regulations at 40 CFR 2.207, the Agency may issue determinations regarding the application of the confidentiality regulations to an entire class, when such a determination serves a useful purpose. In this case, a class determination promoting expeditious processing of section 6(a)(2) information subject to confidentiality claims will assist the Agency in responding to requests for this information and in making the information more widely available. Because under section 2.207 one of the purposes of issuing a class determination is to make known the Agency's position regarding the manner in which information within the class will be treated, EPA is publishing notice of the class determination in the **Federal Register**.

List of Subjects

Environmental protection.

Dated: December 7, 1999.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 99–32185 Filed 12–14–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6509–6]

Prospective Purchaser Agreement and Covenant Not To Sue Under the Comprehensive Environmental Response, Compensation, and Liability Act Regarding the Mechanic Street Realty Corporation Superfund Site, Perth Amboy, NJ

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed prospective purchaser agreement and request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9601, *et seq.*, the U.S. Environmental Protection Agency (''EPA'') announces a proposed administrative settlement with the City of Perth Amboy, New Jersey (''City''), a ''prospective purchaser'' of the Mechanic Street Realty Corporation Superfund Site (''Site'') in Perth Amboy, New Jersey. The proposed administrative settlement is memorialized in an Agreement And Covenant Not To Sue (''Agreement'') between EPA and the City. By this Notice, EPA is informing the public of the proposed settlement and of the opportunity to comment.

EPA performed a CERCLA removal action at the Site, a vacant four-acre former industrial complex, in 1997–1998 after investigations revealed the presence of hazardous substances. EPA stabilized and disposed of hazardous substances in tanks and containers at the Site to reduce the threat of release and the potential for exposure through direct human contact and on-site releases. The City designated the Site as part of its ''Focus 2000'' redevelopment program in 1997. Once it has acquired the Site, the City intends to transfer the property to a new owner for redevelopment.

Under the Agreement, if the City transfers the Site to a governmental agency for redevelopment for public use, the City will perform certain investigative and remedial work at the Site in exchange for the United States' covenant not to sue or take any other civil or administrative action against the City for any and all civil liability, for injunctive relief or reimbursement of response costs pursuant to sections 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a) with respect to existing contamination present on or under the Site. If the City sells or leases the Site to any other party, the Agreement provides that the City will perform the work described above and pay EPA either 50% of the net proceeds of the sale or lease after the City deducts any taxes on the property owed to the City and its transaction costs or the total amount of EPA's documented costs, whichever is less. EPA believes this settlement is fair and in the public interest.

EPA will consider any comments received during the comment period and may withdraw or withhold consent to the proposed settlement if comments disclose facts or consideration that indicate the proposed settlement is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection with U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway, 17th Floor, New York, New York 10007–1866. Telephone: (212) 637–3111.

Pursuant to EPA guidance, the Agreement may not be issued without the concurrence of the Assistant Attorney General for Environment and

Natural Resources of the U.S. Department of Justice. The Assistant Attorney General has approved the proposed Agreement in writing.

DATES: Comments must be provided by January 14, 2000.

ADDRESSES: Comments should be sent to the U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway, 17th Floor, New York, NY 10007–1866 and should refer to: the Mechanic Street Realty Corporation Superfund Site, U.S. EPA Docket No. II–CERCLA–02–99–2024.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway, 17th Floor, New York, New York 10007–1866. Telephone: (212) 637–3111.

SUPPLEMENTARY INFORMATION: A copy of the proposed administrative settlement may be obtained in person or by mail from Joseph Cosentino, U.S. Environmental Protection Agency, 2890 Woodbridge Avenue, Edison, New Jersey 08837–3679, (732) 906–6983.

Dated: September 30, 1999.

Jeanne M. Fox,

Regional Administrator, Region 2.

[FR Doc. 99–32518 Filed 12–14–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6509–7]

Proposed Settlement Under Section 122 (h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment—Hercules Incorporated Superfund Site.

SUMMARY: The United States Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement to resolve certain claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA). Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. This settlement concerns the Hercules Incorporated Superfund Site in Gibbstown, New Jersey and is intended to resolve two parties' liability for response costs incurred by EPA.

DATES: Comments must be provided by January 14, 2000.

ADDRESSES: Comments should be addressed to the United States Environmental Protection Agency, Office Regional Counsel, 290 Broadway, 17th Floor, New York, N.Y. 10007, and should refer to: In the Matter of the Hercules Incorporated Superfund Site: Hercules Incorporated Administrative Settlement, under section 122(h)(1) of CERCLA, U.S. EPA Index No. II–CERCLA–02–99–2029.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway, 17th Floor, New York, N.Y. 10007; Attention: Kedari Reddy, Esq. (212) 637–3106.

SUPPLEMENTARY INFORMATION: In accordance with section 122 (i) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the Hercules Incorporated Superfund Site located in Gibbstown, New Jersey. Section 122(h)(1) of CERCLA provides EPA with authority to settle certain claims for response costs incurred by the United States when the settlement has received the approval of the Attorney General of the United States of America. The two settling parties will pay a total of $435,000 to reimburse EPA for response costs incurred at the Hercules Incorporated Superfund Site.

Dated: September 29, 1999.

William J. Muszynki,

Acting Regional Administrator, Region 2.

[FR Doc. 99–32517 Filed 12–14–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–MO; FRL–6385–3]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Missouri's Authorization Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On September 1, 1999, the State of Missouri submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). This notice announces the receipt of the State of Missouri's application, provides a 45–day public comment period, and provides an opportunity to request a public hearing on the application. Missouri has provided self-certification of a lead program meeting the requirements for approval under section 404 of TSCA. Therefore, pursuant to section 404 of TSCA, the State program is deemed authorized as of the date of submission. If EPA subsequently finds that the program does not meet all the requirements for approval of a State program, EPA will work with the State to correct any deficiencies in order to approve the program. If the deficiencies are not corrected, a notice of disapproval will be issued in the **Federal Register** and a Federal program will be implemented in the State.

DATES: Comments, identified by docket control number PB–402404–MO , must be received on or before January 31, 2000. In addition, a public hearing request may be submitted on or before January 31, 2000.

ADDRESSES: Comments and the public hearing request may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number PB–402404–MO in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Mazzie Talley, Lead Coordinator, Radiation, Asbestos, Lead and Indoor Programs Branch, Air, RCRA and Toxics Division, Environmental Protection Agency, 901 North 5th St., Kansas City, KS 66101; telephone number: (913) 551–7518; e-mail address: talley.mazzie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to firms and individuals engaged in lead-based paint activities in the State of Missouri. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that

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

C. How and to Whom Do I Submit Comments and Hearing Requests?

You may submit comments and hearing requests through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PB–402404–MO in the subject line on the first page of your response.

1. *By mail.* Submit your comments and hearing requests to: Mazzie Talley, Lead Coordinator, Radiation, Asbestos, Lead and Indoor Programs Branch, Air, RCRA and Toxics Division, Environmental Protection Agency, 901 North 5th St., Kansas City, KS 66101.

2. *In person or by courier.* Deliver your comments and hearing requests to: Radiation, Asbestos, Lead and Indoor Programs Branch, Air, RCRA and Toxics Division, Region VII, Environmental Protection Agency, 901 North 5th St., Kansas City, KS 66101. The regional office is open from 8 a.m. to 5 p.m., Monday through Friday, excluding legal holidays. The telephone number for the regional office is (913) 551–7020.

3. *Electronically.* You may submit your comments and hearing requests electronically by e-mail to: ''talley.mazzie@epa.gov'' or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data and hearing requests will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments and hearing requests in electronic form must be identified by docket control number PB–402404–MO. Electronic comments and hearing requests may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under ''FOR FURTHER INFORMATION CONTACT.''

II. Background

A. What Action is the Agency Taking?

The State of Missouri has provided a self-certification letter stating that its lead-based paint training and certification program meets the requirements for authorization of a State program under section 404 of TSCA and has requested approval of the Missouri lead-based paint training and certification program. Therefore, pursuant to section 404 of TSCA, the program is deemed authorized as of the date of submission (i.e., September 1, 1999). If EPA subsequently finds that the program does not meet all the requirements for approval of a State program, EPA will work with the State to correct any deficiencies in order to approve the program. If the deficiencies are not corrected, a notice of disapproval will be issued in the **Federal Register** and a Federal program will be implemented in the State.

Pursuant to section 404(b) of TSCA (15 U.S.C. 2684(b)), EPA provides notice and an opportunity for a public hearing on a State or Tribal program application before approving the application. Therefore, by this notice EPA is soliciting public comment on whether the State of Missouri's application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. If a hearing is requested and granted, EPA will issue a **Federal Register** notice announcing the date, time, and place of the hearing. EPA's final decision on the application will be published in the **Federal Register**.

B. What is the Agency's Authority for Taking this Action?

On October 28, 1992, the Housing and Community Development Act of 1992, Public Law 102–550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681–2692), entitled ''Lead Exposure Reduction.''

Section 402 of TSCA authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges, and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404 of TSCA, a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996, (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. Pursuant to section 404(h) of TSCA, EPA is to establish the Federal program in any State or Tribal Nation without its own authorized program in place by August 31, 1998.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA approval, by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized. This authorization becomes ineffective, however, if EPA disapproves the application or withdraws the program authorization.

III. State Program Description Summary

The following summary of the State of Missouri's proposed program has been provided by the applicant.

The Missouri Department of Health, Office of Lead Licensing and Accreditation (OLLA) licenses lead professions, accredits the required training programs and enforces the work practice standards for conducting lead-bearing substance activities. The OLLA operates under the authority of Revised Statutes of Missouri (1998) 701.300 to 701.338. Together, these functions fulfill the requirements for an EPA approved State program and ensure the quality of lead abatement and assessment conducted in Missouri.

The OLLA licenses and accredits training programs for the following lead occupations: Lead inspectors, risk assessors, lead abatement workers, lead abatement supervisors, project designers, and lead abatement contractors. For each occupation, an applicant for licensure must meet or exceed education and experience requirements, successfully complete an appropriate training program, and score at least 70% on the State licensing examination for lead inspectors, risks assessors, and lead abatement supervisors, all pursuant to regulation. An applicant for a lead abatement contractor has no experience and education requirements. The licensed lead abatement contractor's application includes a certification that it will only hire licensed individuals to conduct lead-bearing substance activities and that it will follow the work practice standards.

Licensed lead professionals must comply with Missouri Work Practice Standards when conducting lead-bearing substance activities on target housing or child-occupied facilities. These work practice standards ensure that lead-bearing substance activities are conducted reliably, effectively, and safely. The OLLA has the authority to take administrative or civil actions or seek criminal actions against an entity that violates the work practice standards or fails to comply with any part of the licensure regulations.

The OLLA currently has three full-time professional administrators: Health Program Representative III (Director), Health Program Representative I, and Environmental Specialist II. The Office also has one full-time Clerk Typist II.

IV. Federal Overfiling

Section 404(b) of TSCA makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

V. Submission to Congress and the General Accounting Office

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

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: November 18, 1999.

William Rice,

Acting Administrator, Region VII.

[FR Doc. 99–32417 Filed 12–14–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00633; FRL–6395–8]

Proposed Test Guidelines; Notice of Availability and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and request for comments.

SUMMARY: EPA has established a unified library for test guidelines issued by the Office of Prevention, Pesticides and Toxic Substances (OPPTS) for use in testing chemical substances to develop data for submission to EPA under the Toxic Substances Control Act (TSCA), the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). These test guidelines represent an Agency effort that began in 1991 to harmonize the test guidelines within OPPTS, as well as to harmonize the OPPTS test guidelines with those of the Organization for Economic Cooperation and Development (OECD). The process for developing and amending these test guidelines includes public participation and the extensive involvement of the scientific community, including peer review by the Scientific Advisory Panel (SAP) and the Scientific Advisory Board (SAB) and other expert scientific organizations. With this notice, EPA is announcing the availability of the proposed tests for the Series 810–Product Performance Testing Guidelines titled ''OPPTS 810.3700 Insect Repellents For Human Skin and Outdoor Premises'' and a Pesticide Registration (PR) Notice titled ''Insect Repellants: Labeling, Data Citations, and Testing Criteria'' explaining specific areas of the guideline and recommended label language.

DATES: Comments, identified by docket control number OPP–00633, must be received by EPA on or before January 14, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00633 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact:*

Toxic Substances Control Act (TSCA) information contact: TSCA Hotline at TAIS/7408, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (202) 554–1404; fax number: (202) 554–5603; e-mail address: TSCA-Hotline@epa.gov.

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) information contact: Communications Services Branch (7506C), Field and External Affairs Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–5017; fax number: (703) 305–5558.

For technical information contact: Robyn Rose, Office of Pesticide Programs, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–9581; e-mail address: rose.robyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be

of particular interest to those persons who are or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA), the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under ''FOR FURTHER INFORMATION CONTACT.''

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

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

You may also obtain copies of test guidelines from the EPA Internet Home Page by selecting ''Researchers and Scientists/Test Methods and Guidelines/OPPTS Harmonized Test Guidelines'' at http://www.epa.gov/epahome/research.htm.

B. *Fax on demand.* You may request a faxed copy of the PR Notice titled ''Insect Repellants: Labeling, Data Citations, and Testing Criteria'' by using a faxphone to call (202) 401–0527 and selecting item 6122. You may also follow the automated menu.

C. *In person.* The Agency has established an official record for this proposed guideline under docket control number OPP–00633. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00633 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* Submit your comments electronically by e-mail to: ''opp-docket@epa.gov,'' or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–00633. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person identified under ''FOR FURTHER INFORMATION CONTACT.''

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number OPP–00633 in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

IV. What Action is EPA Taking?

EPA is announcing the availability of a proposed test guideline for the Series 810 guidelines titled ''OPPTS 810.3700 Insect Repellents For Human Skin and Outdoor Premises Product Performance Testing Guidelines'' and a PR notice titled ''Insect Repellants: Labeling, Data Citations, and Testing Criteria'' explaining specific areas of the guideline and recommended label language.

V. How Were these Test Guidelines Developed?

A. Product Performance Testing Guidelines for Insect Repellents

These product performance testing guidelines are intended to update EPA, Pesticide Assessment Guidelines, Subdivision G: OPP guidelines 95–9 Treatments to control pests of humans and pets and 95–10 Mosquito, black fly,

non-biting midge, and biting midge. These guidelines are concerned with product performance testing for evaluation of pesticides used to repel biting flies, fleas, chiggers and ticks from human skin and outdoor premises. Commercial pesticide formulations used to repel mosquitoes, fleas, chiggers and ticks from human skin include, but are not limited to, liquid or pressurized spray products, impregnated material or articles with the repellent, lotions, coils, candles, or vaporizing mats.

The recommendations contained within these guidelines address the conduct of product performance testing of insect repellents. Because they are guidelines, mandatory requirements are not imposed. However, they do reflect the considered judgment of the Agency and recognized experts as to what minimum steps are necessary to produce reliable data on product performance. Accordingly, EPA advises that any deviations from final guidelines be fully explained and justified.

B. Pesticide Regulation Notice

Inconsistencies have developed in product performance testing and labeling of insect repellents. In order to minimize this variance, EPA is developing product performance testing guidelines and recommended label language. The label language proposed by the Agency is intended to standardize and improve the information provided to the consumer.

EPA intends to use the data from the guideline studies to help determine the adequacy of the labeling of insect repellent products. EPA will review label statements as products are initially registered as well as for previously registered products.

VI. Specific Areas For Comment

Please comment on all aspects of the guidelines and PR Notice. The Agency is particularly looking for comments to the following questions:

1. Do you agree with the Agency's proposed decision to recommend that data be evaluated based upon the mean time to the first bite or a 95% reduction in bites rather than relying on the first confirmed bite test?

2. Is the Agency's recommended biting pressure adequate to verify the insect is being repelled by the pesticide?

3. Are 5 treated test subjects for a label claim of 4 hours of repellency and 10 treated test subjects for a label claim of 5 or more hours of repellency enough test subjects for statistically credible results? (For more information reference: Rutledge, L.C., and R.K. Gupta. 1999. Variation in the protection periods of repellents on individual human subjects: an analytical review. J. Am. Mosq. Cont. Ass. 15(3) 348–355.)

4. Although it is preferred, the Agency did not think it was feasible to expect an equal number of male and female test subjects. Do you agree?

5. Do the proposed application rates correlate to typical consumer use?

6. The Agency did not believe it was feasible to recommend all treated test subjects leave an untreated limb exposed to bites. Is it acceptable to allow one untreated test subject? Why or why not?

7. Is a 50% reduction in bites an acceptable level of efficacy for candles, coils, and vaporizing mats? Can this be justified statistically?

8. The Agency acquired several different methods to test repellency of fleas and ticks. Due to the high incidence of Lyme disease in the U.S., EPA did not recommend field tests for deer ticks. Due to the difficulty to find an area with adequate biting pressure, the Agency did not recommend field tests for fleas. Will the proposed laboratory tests provide adequate data to determine deer tick and flea repellency?

9. Are positive and negative controls under replicate test conditions adequate to provide a foundation against which efficacy can be assessed?

VII. Are there Any Applicable Voluntary Consensus Standards that EPA Should Consider?

This notice of availability does not involve a proposed regulatory action that would require the Agency to consider voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Section 12(d) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide an explanation to Congress, through OMB, when the Agency decides not to use available and applicable voluntary consensus standards when the NTTAA directs the Agency to do so.

These test guidelines represent an Agency effort to harmonize the test guidelines within OPPTS, as well as to harmonize the OPPTS test guidelines with those of the OECD. The process for developing and amending these test guidelines, which began in 1991, includes public participation and the extensive involvement of the scientific community, including peer review by the SAP and the SAB and other expert scientific organizations.

In the future, these test guidelines could be incorporated into regulatory actions taken by EPA under TSCA, i.e., with regard to the section 4 testing program. Although the NTTAA requirements do not specifically apply to the issuance of these particular test guidelines today, EPA invites your comment on whether or not there are any voluntary consensus standards that should be considered during the development of the final test guidelines or any future regulatory action that may be taken under TSCA. Future regulatory actions under TSCA section 4 may involve notice and comment rulemaking or negotiated voluntary testing enforcement consent agreements/orders/decrees. Nevertheless, the Agency is interested in whether or not there are any voluntary consensus standards that EPA should consider either as part of the development of the test guidelines themselves or in lieu of these test guidelines when the Agency develops any future regulatory action that incorporates these test guidelines. Any comments provided will assist the Agency in complying with the NTTAA by facilitating the Agency's identification of voluntary consensus standards that should be addressed in the test guideline or considered during the development of a proposed regulatory action that incorporates any standards included in the final test guidelines. Please submit your comments as directed in Unit III. of the ''SUPPLEMENTARY INFORMATION.''

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Chemical testing, Pesticides and pests, Test guideline.

Dated: December 7, 1999.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 99–32385 Filed 12–14–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

December 6, 1999.

The Federal Communications Commission (FCC) has received Office

of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0894.

Expiration Date: 05/31/2000.

Title: Certification Letter Account for Receipt of Federal Support—CC Docket Nos. 96–45 and 96–262.

Form No.: N/A.

Respondents: State, Local or Tribal Government.

Estimated Annual Burden: 51 respondents; 3 hours per response (avg.); 153 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Annually.

Description: States that desire non-rural incumbent local exchange carriers (LECs) and/or eligible telecommunications carriers serving lines in the service area of a non-rural incumbent LEC within their jurisdiction to receive support pursuant to 47 CFR sections 54.309 and/or 54.311 must file an annual certification with the Administrator and the Commission stating that all federal high-cost support provided to such carriers within that state will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. A certification may be filed in the form of a letter and must be filed with both the Office of Secretary of the Commission and with the Administrator on or before the deadlines set forth in 47 CFR 54.313(c)(1)–(3). The annual certification must identify which carriers in the State are eligible to receive federal support during the applicable 12 month period and must certify that those carriers will only use the support for the provision, maintenance, and upgrading of facilities and services for which the support is intended. A state may file a supplemental certification for carriers not subject to the State's annual certification. See 47 CFR section 54.313. This information will be used to show that federal high-cost support is being provided to the carrier to assist in keeping rates affordable in those subscribers' area. Further, the collection of information will be used to verify that the carries have accounted for its receipt of federal support in its rates or otherwise used the support for the ''provision, maintenance, and upgrading of facilities and services for which the support is intended'' in accordance with section 254(e). Obligation to respond: required to obtain or retain benefits.

OMB Control No.: 3060–0233.

Expiration Date: 05/31/2000.

Title: Separations—Part 36.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 1500 respondents; 104.75 hours per response (avg.); 157,125 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; quarterly; annually; third party disclosures.

Description: Telephone companies are required to identify investment, expenses and revenues attributable to intrastate and interstate operations pursuant to a court decision. These procedures are found in 47 CFR Part 36. In the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Congress codified the Commission's historical policy of promoting universal service to ensure that consumers in all regions of the nation have access to telecommunications service. In 47 USC section 254, Congress instructed the Commission to establish specific, predictable, and sufficient mechanisms to preserve and advance universal service. 47 CFR Sections 36.601–36.741 contain the following procedures and collections for the Universal Service Fund Program. a. 47 CFR Sections 36.611 and 36.612—In order to allow determination of the study areas that are entitled to an expense adjustment, and the wire centers that are entitled to support pursuant to 47 CFR Part 54, each incumbent local exchange carrier must provide the National Exchange Carrier Association (NECA) with the information required by 47 CFR section 36.611 for each of its study areas, with the exception of the information listed in subsection (h), which must be provided for each study area and, if applicable, for each wire center as that term is defined in 47 CFR Part 54. This information is to be filed with NECA by July 31st of each year, and must be updated pursuant to 47 CFR section 36.612. The information filed on July 31st of each year will be used in the jurisdictional allocations underlying the cost support data for the access charge tariffs to be filed the following October. (No. of respondents: 1431; hours per response: 22 total annual burden: 125,928). b. 47 CFR sections 36.701–36.741—State or local carriers must submit copies of their lifeline plans to demonstrate that their plans meet certain minimum federal guidelines to qualify for federal assistance. 47 CFR section 36.721 requires state or local telephone companies who want to participate in the ''Link-Up America'' Program to file data with the Commission demonstrating eligibility pursuant to the criteria contained in 47 CFR section 36.721(a)(1)–(4). (No. of respondents: 50; hours per response: 20 hours; total annual burden: 1000 hours). c. 47 CFR section 36.731 requires local telephone companies participating in the lifeline programs to file information with NECA for each of their study areas, on a yearly basis, on June 30th. Information to be filed with NECA includes: estimate of the number of eligible households which will receive assistance under both parts of the ''Link-Up America'' programs; estimate of the average discount on service commencement to be provided to each subscriber; and estimate of the average deferred interest cost for each subscriber. Carriers must submit the foregoing information to the Commission, as well as to NECA for those study areas in which the additional interstate expense allocation is to be in effect for less than a full calendar year. See also 47 CFR section 36.741. (No. of respondents: 1500; hours per response: 20 hours; total annual burden: 30,000 hours). d. In a NPRM issued in CC Docket No. 80–286, released 10/7/97, the Commission sought comment on a proposed rule allowing incumbent LECs to separate joint and common costs on an individual basis should be contingent upon an ILECs showing that competition exists in the local markets for which they seek relaxed separations rules. (No. of respondents: 100; hours per response: 2 hours; total annual burden: 200 hours). The requirements contained herein are necessary to implement the congressional mandate for universal service. The reporting requirements are necessary to verify that non-rural local exchange carriers are eligible to receive universal service support. Information filed with NECA pursuant to section 36.611 is used in the jurisdictional allocations underlying the cost support data for the access charge tariffs every April. Without this information, NECA would not be able to prepare and file the necessary tariffs. Information submitted to the Commission pursuant to Section 36.721

is required to maintain the integrity of the Federal Lifeline Assistance programs. Certification is necessary to ensure that the targeted group is the beneficiary of the program. The authorities for imposing the collections of information are found at: 47 USC Sections 151, 154(i) and (j), 221(c) and 410(c). Obligation to respond: Mandatory.

OMB Control No.: 3060–0774.

Expiration Date: 05/31/2000.

Title: Federal-State Joint Board on Universal Service—CC Docket No. 96–45, 47 CFR Part 54.

Form No.: N/A.

Respondents: Business or other for-profit; State, Local or Tribal government.

Estimated Annual Burden: 5,565,451 respondents; .32 hours per response (avg.); 1,787,278 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; quarterly; annually; recordkeeping.

Description: In the Ninth Report and Order and Eighteenth Order on Reconsideration in CC Docket No. 96–45, released November 2, 1999, the Commission modified 47 CFR Part 54 by adopting several amendments to the current data reporting requirements to ensure that cost and loop count data submitted by non-rural carriers under 47 CFR Part 36 conforms with loop count data submitted under Part 54 for forwarding looking support. The amended sections containing information collections are as follows. a. 47 CFR Section 54.307—In order to receive support, a competitive eligible telecommunications carrier must report to the Administrator on July 31 of each year the number of working loops it serves in a service area as of December 31 of the preceding year, subject to updates specified in 47 CFR 54.307(c). For a competitive eligible telecommunications carrier service loops in the service area of a rural telephone company, the carrier must report the number of working loops it serves in the service area. For a competitive eligible telecommunications carrier serving loops in the service area of a non-rural telephone company, the carrier must report the number of working loops it serves in the service area and the number of working loops it serves in each wire center in the service area. A competitive eligible telecommunications carrier serving loops in the service area of a non-rural carrier telephone company, the carrier must update the information submitted to the Administrator pursuant to 47 CFR 54.307(c)(1)–(3). Because the interim hold-harmless provision provides support based on the existing 47 CFR Part 36 support mechanism, which relies on book costs, non-rural incumbent LECs will be required to file cost data, in addition to loop-count data, in order to receive interim hold-harmless support. (No. of respondents: 1300; 4.1 hours per response: total annual burden: 5400 hours). 47 CFR Section 54.309—Any state may file a petition for a waiver to ask the Commission to distribute support calculated to a geographic area different than the wire center. Such petition must contain a description of the particular geographic level to which the state desires support to be distributed, and an explanation of how waiver will further the preservation and advancement of universal service within the state. (No. of respondents: 51; hours per response: 4 hours; total annual burden: 204 hours). c. 47 CFR Section 54.311—A state may file a petition for a waiver asking the Commission to distribute interim hold-harmless support to a geographic area different than the wire center. Such petition must contain a description of the particular geographic level to which the State desires interim hold-harmless support to be distributed, and an explanation of how waiver will further the preservation and advancement of universal service within the state. (No. of respondents: 51; hours per response: 4; total annual burden: 204 hours). The information will be used to show that federal high-cost support is being provided to the carrier to assist in keeping rates affordable in those subscribers' area. Further, the collection of information will be used to verify that the carriers have accounted for its receipt of federal support in its rates or otherwise used the support for the ''provision, maintenance, and upgrading of facilities and services for which the support is intended'' in accordance with 47 USC Section 254(e). Obligation to respond: Mandatory.

OMB Control No.: 3060–0874.

Expiration Date:

Title: Consumer Complaint Forms.

Form No.: FCC Forms 475 and 476.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government.

Estimated Annual Burden: 80,000 respondents; .50 hours per response (avg.); 40,000 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: Pursuant to 47 USC Section 208 and 47 CFR Sections 1.711 and 1.716, consumers may file complaints against common carriers with the Commission. Section 208(a) authorizes complaints by any person ''complaining of anything done or omitted to be done by any common carrier'' subject to the provisions of the Act. Section 208(a) specifically states that ''it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.'' Once an informal complaint is determined to involve a dispute within the Commission's jurisdiction, it is forwarded to the carrier(s) involved. The data provided by consumers not only assists the carriers to adequately address consumers' issues, but also provides the commission with baseline data required to monitor and assess the practices of common carriers. This assessment facilitates enforcement of the Communications Act and Commission rules; and helps to identify where rulemakings are required to further protect the interests of consumers. The Complaint Form, FCC Form 475, will provide consumers a concise structured approach to communicate critical information required by the Commission to facilitate complaint resolution and enhance the collection of data related to unjust and unreasonable practices of common carriers. (No. of respondents: 40,000; hours per response: .50 hours; total annual burden: 40,000. The Give Us the Scoop form, FCC Form 476, will provide consumers a concise structured approach to communicate information required by the Commission to monitor the practices of common carriers. In many instances, consumers who have experienced problems with carriers are able to resolve their problem directly with the carriers. As a result, they do not understand that there is still a need to report the incident to the regulating agency or agencies. In such cases, the Commission has lost access to critical data that can be used to identify unlawful or unethical carrier practices. To address specific issues before they become a significant problem, the Commission has to collect data that leads to proactive enforcement and rulemaking. (No. of respondents; 40,000; hours per response: .50 hours; total annual burden; 40,000 hours). Consumers can currently use FCC Forms 475 and 476 via the Internet (www.fcc.gov) or through the FCC's toll-free number to file a complaint or provide information. However, since a large number of consumers may not

have access to the Internet or be able to call the toll-free number during the workday, a consumer form has been developed which can be mailed or faxed to consumers upon request. The information will be used by Commission staff to assist in the resolution of complaints and as a part of the investigation work done by Federal and state law enforcement agencies to monitor carrier practices. The data ultimately becomes the foundation for enforcement actions. (Obligation to respond: Voluntary).

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, D.C. 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–32408 Filed 12–14–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–2733]

NGSO FSS Results From the Conference Preparatory Meeting on Technical, Operational and Regulatory/Procedural Matters

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document seek comments on Non-geostationary Satellite Orbit (NGSO), Geostationary Satellite Orbit (GSO), Fixed Satellite Service (FSS) results from the Conference Preparatory Meeting (CPM) on Technical, Operational and Regulatory/Procedural Matters to be considered by the 2000 World Radiocommunication Conference. These spectrum sharing issues are currently being addressed in ET Docket 98–206. To ensure that our decisions in the docket are based on a comprehensive technical record, we are seeking additional comments pertaining to any relevant issues identified in Chapter 3 of the CPM Report.

DATES: Comments are due December 20, 1999.

FOR FURTHER INFORMATION CONTACT: Tom Derenge (202) 418–2451, email: *tderenge@fcc.gov,* Office of Engineering and Technology or Harry Ng (202) 418–0752, email: hng@fcc.gov, International Bureau.

SUPPLEMENTARY INFORMATION: This is the text of the Commission's *Public Notice*, DA 99–2733, released December 6, 1999. This document is available for inspection and copying during regular business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW, Washington, DC, and is available on the FCC's Internet site at www.fcc.gov/Bureaus/Engineering—Technology/Public—Notices/1999/.

This document may also be purchased from the Commission's duplication contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Summary of Public Notice

1. On December 3, 1999, Skybridge LLC filed *ex parte* comments in ET Docket 98–206 reflecting the conclusions reached at the November 19, 1999, Conference Preparatory Meeting (CPM) in Geneva, Switzerland pertaining to spectrum sharing between Non-geostationary Satellite Orbit (NGSO) and Geostationary Satellite Orbit (GSO) Fixed Satellite Service (FSS) operations. Panamsat Corporation also filed comments on the CPM Report on December 6, 1999.

2. These NGSO/GSO FSS spectrum sharing issues are also currently being addressed in ET Docket No. 98–206. The CPM Report also addresses results concerning spectrum sharing between NGSO FSS and GSO Broadcast Satellite Services (BSS), another issue in ET Docket No. 98–206. To ensure that our decisions in the docket are based on a comprehensive technical record, the Office of Engineering and Technology and the International Bureau seek additional comments pertaining to any relevant issues identified in Chapter 3 of the CPM Report. In particular, we would like commenters to address the compromise solutions for NGSO/GSO FSS operations, including validation EPFD limits; additional operational limits; and operational limits contained in Sections 3.1.2.1.2—Protection Criteria; 3.1.2.1.3—Methodologies used to assess the adequacy of the limits to protect GSO FSS; 3.1.2.1.4—Results of studies relating to the review/revision of the provisional power limits appearing in Section II of Article S22; 3.1.2.4.7—Operational limits to the EPFD by non-GSO systems in certain frequency bands; and 3.1.2.4.8—Additional EPFD down limits to protect GSO FSS in the bands 10.7–11.7 GHz (in all Regions), 11.7–12.2 GHz (Region 2), 12.2–12.5 GHZ (Region 3), and 12.5–12.75 GHz (Regions 1 and 3), as well as all relevant annexes to Chapter 3. NGSO FSS/GSO BSS sharing issues are addressed in Section 3.1.3. In addition, we are submitting the entire text of Chapter 3 of the CPM Report in this docket.

3. For *ex parte* purposes this proceeding, as well as any additional comments filed, continues to be a ''permit-but-disclose'' proceeding, in accordance with § 1.1200(a) of the Commission's rules, and is subject to the requirements under § 1.1206(b) of the rules.

4. Pursuant to 47 CFR, §§ 1.415 and 1.419, interested parties are invited to file comments no later than December 20, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceeding*, 63 Fed. Reg. 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via Internet to http://www.fcc.gov/e-file/ecfs.html. In completing the transmittal screen, parties responding should include their full name, mailing address, and the applicable docket number, ET Docket 98–206.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 99–32248 Filed 12–14–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Report No. 2374

Correction; Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

December 3, 1999.

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 CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed on or before January 11, 2000. Replies to an opposition must be filed on or before January 21, 2000. Generally, the time for filing oppositions and replies are established in accordance with Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)), based on the **Federal Register** publication of the public notice. However, in this case we are hereby indicating in this public notice the established deadlines for filing oppositions and replies.

Subject: Implementation of the Telecommunications Act of 1996 (CC Docket No. 96–115).

Telecommunications Carrier's Use of Customer Proprietary Network Information and Other Customer Information.

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96–98).

Provision of Directory Listing Information Under the Telecommunications Act of 1934, As Amended (CC Docket No. 99–273).

Number of Petitions Filed: 5.

Subject: Direct Access to the INTELSAT System (IB Docket No. 98–192).

Number of Petitions Filed: 2.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–32410 Filed 12–14–99; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of a Matter To Be Withdrawn From the Agenda for Consideration at an Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the following matter will be withdrawn from the ''discussion agenda'' for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 10:00 a.m. on Tuesday, December 14, 1999, in the Board Room on the sixth floor at the FDIC Building located at 550—17th Street, N.W., Washington, D.C.:

Memorandum re: Proposed Amendment to Statement of Policy on Applications for Deposit Insurance.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: December 13, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–32593 Filed 12–13–99; 12:29 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE AND TIME: Thursday, December 16, 1999 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

The following item has been added to the agenda: Application of 26 U.S.C. § 9033(c) and 11 CFR §§ 9033.5(b) and 9033.8(b) in the 2000 Presidential Nominating Process (LRA #574).

PERSON TO CONTACT FOR INFORMATION: Ron Harris, Press Officer, Telephone (202) 694–1220.

Mary W. Dove,

Acting Secretary.

[FR Doc. 99–32634 Filed 12–13–99: 1:55 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 203–011681.

Title: Amazon River Discussion Agreement.

Parties:

Amazon Line Ltd.
APL Co. PTE Ltd.
American Transport Line
Mitsui OSK Lines Ltd.
P&O Nedlloyd B.V.

Synopsis: The proposed agreement authorizes the parties to meet, discuss, consult, and reach voluntary and non-binding consensus regarding rates, charges, rules, and practices in the trade between ports on the U.S. Atlantic and Gulf coasts, including U.S. inland points via those ports, and the port of Belem, Brazil, and Amazon River ports, including inland points served through those ports.

By Order of the Federal Maritime Commission.

Dated: December 10, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–32502 Filed 12–14–99; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding revocation dates shown below:

License No.: 2271.

Name: Cargo Express, Inc.

Address: 15836 Lee Road, P.O. Box 60352, Houston, TX 77205–0352.

Date Revoked: November 1, 1999.

Reason: Surrendered license voluntarily.

License No.: 4296.

Name: J & L Forwarding Co., Inc.

Address: Two Executive Drive, Suite 720, Fort Lee, NJ 07024.

Date Revoked: October 31, 1999.

Reason: Surrendered license voluntarily.

License No.: 2367.

Name: Kenney Transport, Inc.

Address: 145–38 157th Street, Jamaica, NY 11434.

Date Revoked: April 16, 1999.

Reason: Failed to maintain a valid surety bond.

License No.: 2176.

Name: Lido International, Inc.

Address: 6352 N.W. 171st Street, Miami, FL 33015.

Date Revoked: October 12, 1999.

Reason: Surrendered license voluntarily.

License No.: 37.

Name: Sunshine Forwarders, Inc.

Address: 1510 Talleyrand Avenue, P.O. Box 88, Jacksonville, FL 32201–0088.

Date Revoked: November 8, 1999.

Reason: Surrendered license voluntarily.

T.A. Zook,

Deputy Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 99–32504 Filed 12–14–99; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Red Eagle Shipping Agencies Pvt. Ltd., H–11, 1st Floor, Kalkaji, New Delhi 110 019, India, Officer: Ramgopal Ramachandran, Director (Qualifying Individual)

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Fescargo Corporation, 1145 W. Walnut Street, Compton, CA 90220, Officers: John Se Hwan Park, General Manager, (Qualifying Individual), Sergio Occelli De La Parra, President

International Solutions, Inc., 1901 East Lambert Road, Suite 201, La Habra, CA 90631, Joseph M. Zizi, President, (Qualifying Individual); Michael T. Fike, Vice President

Cargo Maritime, Inc., 13816 Bora Bora Way #126–A, Marina Del Rey, CA 90292, Officers: Josephine P. Askgaard, President; Martin Askgaard, Vice President

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants

Nordic International Services, LLC, 2110 Brown Road, Lakewood, OH 44107, Officers: Heiko Wolfgang Luehrs, President, Qualifying Individual); Marc Lehotsky, Exec. Director

Prudential Residential Services d/b/a Prudential Relocation, 3333 Michelson Drive, Suite 1000, Irvine, CA 92612, Officer: Michael Cazalet, Director, (Qualifying Individual)

Jing Dong Wang, 2041 Euclid Street, #9, Santa Monica, CA 90405, Sole Proprietor

Dated: December 10, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–32503 Filed 12–14–99; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 28, 1999.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. William E. Durrett and Edward C. Joullian, III as trustees of the William M. Cameron Trust B and Lynda L. Cameron Trust B, Oklahoma City, Oklahoma; to acquire voting shares of First Fidelity Bancorp, Inc., Oklahoma City, Oklahoma, and thereby indirectly acquire voting shares of First Fidelity Bank, N.A., Oklahoma City, Oklahoma.

2. Leroy Ernest and Phyliss J. Denny, Maysville, Missouri; Leslie Ernest Denney, Maysville, Missouri; Stephen Leroy Denny, Frederick, Maryland; Cathy Sue Mistenhelter, Overland Park, Kansas; and Carman Jean Weigand, Cameron, Missouri; to acquire voting shares of Fairport Bancshares, Inc., Fairport, Missouri, and thereby indirectly acquire voting shares of Bank of Fairport, Fairport Missouri.

Board of Governors of the Federal Reserve System, December 8, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–32256 Filed 12–14–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 7, 2000.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Glenwood Bancorporation, Glenwood, Iowa; to acquire 100 percent of the voting shares of Frontier Savings Bank (in organization), Council Bluffs, Iowa.

2. Terre Haute Savings MHC, Inc., Terre Haute, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Terre Haute Savings Bank, Terre Haute, Indiana, through the conversion of the savings bank from the mutual to the stock form of organization.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:3

1. Otto Bremer Foundation and Bremer Financial Corporation, both of St. Paul, Minnesota; to acquire 100 percent of the voting shares of Northwest Equity Corp., Amery, Wisconsin, and thereby indirectly acquire voting shares of Northwest Savings Bank, Amery, Wisconsin.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer

Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Banque Nationale de Paris, Paris, France; to acquire up to 45 percent of the voting shares of BancWest Corporation, Honolulu, Hawaii, and thereby indirectly acquire voting shares of Bank of the West, San Francisco, California, and First Hawaiian Bank, Honolulu, Hawaii.

Board of Governors of the Federal Reserve System, December 8, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–32257 Filed 12–14–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 7, 2000.

A. Federal Reserve Bank of Atlanta (Cynthia Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Compass Bancshares, Inc., Birmingham, Alabama; to acquire MegaBank Financial Corporation, Englewood, Colorado, and thereby indirectly acquire MegaBank, Englewood, Colorado, a federal savings bank, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y, and in community development activities, pursuant to § 225.28(b)(12) of Regulation Y.

Board of Governors of the Federal Reserve System, December 8, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–32255 Filed 12–14–99; 8:45 am]

BILLING CODE 6210–01–F

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Sunshine Act Meeting; Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 2:30 p.m., Friday, December 17, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 2lst Streets, N.W., Washington, D.C. 20551

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda: Because of its routine nature, no discussion of the following item is anticipated. The matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed 2000 Private Sector Adjustment Factor.

Discussion Agenda:

2. Proposed 2000 fee schedules for priced services.

3. Proposed 2000 Federal Reserve Bank budgets.

4. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: December 10, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–32559 Filed 12–10–99; 4:45 pm]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Sunshine Act Meeting; Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 3:30 p.m., Friday, December 17, 1999, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: December 10, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–32560 Filed 12–10–99; 4:45 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice.

SUMMARY: The FTC is submitting the information collection requirements of its Pay-Per-Call Rule, including certain proposed amendments, to the Office of

Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act.

DATES: Comments must be submitted on or before January 14, 2000.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to Edward Clarke, Senior Economist, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503 and also to the Secretary, Federal Trade Commission, room H–159, 600 Pennsylvania Avenue, NW, Washington, DC 20580. All submissions should be captioned ''Pay-Per-Call Rule'' and be identified as responding to this notice.

FOR FURTHER INFORMATION CONTACT: Alex Tang, Office of the General Counsel, FTC, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326–2447. For information regarding the Pay-Per-Call rulemaking, contact Adam Cohn, (202) 326–3411, or Marianne Schwanke, (202) 326–3165, Attorneys, Division of Marketing Practices, Bureau of Consumer Protection, FTC, 600 Pennsylvania Avenue, NW, Washington, DC 20580. A separate Supporting Statement that the Commission is also submitting to OMB will be made available on the Commission's public record of the Pay-Per-Call rulemaking proceeding and on the FTC's Web site, www.ftc.gov.

SUPPLEMENTARY INFORMATION: On October 30, 1998, 63 FR 58524, the Commission published a notice of proposed rulemaking to amend its Pay-Per-Call Rule 16 CFR part 308.[1] The rule, which implements Titles II and III of the Telephone Disclosure and Dispute Resolution Act, 15 U.S.C. 5711 *et seq.,* requires the disclosure of cost and other information with regard to pay-per-call services and establishes dispute resolution procedures for telephone-billed purchases (*i.e.,* charges for pay-per-call services or other charges appearing on a telephone bill other than common carrier toll charges). The Rule contains certain reporting and disclosure requirements that are subject to OMB review under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3520.[2] OMB earlier approved the current information collection requirements under control number 3084–0102, which expires December 31, 1999. Pursuant to the PRA, the Commission is seeking renewed OMB approval for these requirements, including approval of the proposed amendments, until December 31, 2002.

As required by the PRA, the Commission's notice of proposed rulemaking, 63 FR at 58556–57, invited public comment on the rule's information collection requirements and proposed amendments before their submission to OMB for approval. Although the Commission received no comments directly responding to the Commission's specific PRA questions, the Commission received one comment, from U.S. West, stating that its current cost for making an annual disclosure of dispute resolution procedures under the Rule was $53,000 and that this annual cost would increase to $819,000 if the disclosures were required with every billing cycle under a proposed amendment to § 308.20(m)(1). This comment and others (available on the FTC's web site, www.ftc.gov) are being considered by the staff to determine whether to recommend that the Commission not adopt that proposed amendment so as to minimize the Rule's compliance burden.

Pursuant to 44 U.S.C. 3507(a)(1)(D) and 5 CFR 1320.5(a)(1)(iv)(B), the Commission publishes the following additional information, and invites any further public comment to OMB and the Commission, regarding the information collection requirements and amendments being submitted to OMB.

Title: Trade Regulation Rule Concerning Pay-Per-Call Services and Other Telephone-Billed Purchases (''Pay-Per-Call Rule'').

Summary of the collection of information: Reporting and disclosure requirements to implement Titles II and III of the Telephone Disclosure and Dispute Resolution Act of 1992, as amended, 15 U.S.C. 5711, *et seq.*, which requires the disclosure of cost and other information with regard to pay-per-call services and establishes dispute resolution procedures for telephone-billed purchases.

Brief description of the need for and proposed use of the information: The reporting and disclosure requirements are mandated by statute and are necessary to help prevent unfair and deceptive acts and practices in the advertising and operation of pay-per-call services and in the collection of charges for telephone-billed purchases. The information obtained by the Commission pursuant to the reporting requirement is used for law enforcement purposes. The disclosure requirements ensure that consumers are adequately informed of the costs they can expect to incur in using a pay-per-call service, that they will not be liable for unauthorized non-toll charges on their telephone bills, and that they have certain dispute resolution rights and obligations with respect to such telephone-billed purchases.

Likely respondents, including estimated number and proposed frequency of response: Respondents are common carriers (subject to the reporting requirement only), information providers (vendors) offering one or more pay-per-call services or programs, and billing entities. The Commission has previously estimated that it would request information pursuant to the reporting requirement from no more than approximately 25 common carriers per year, and that the disclosure requirements would apply to 20,000 information vendors and 1400 billing entities. As explained in its notice of proposed rulemaking, the Commission, in estimating burden hours, increased its estimates by 12 percent in order to account for industry growth in information vendors and/or pay-per-call services since OMB last approved the Rule's information collection requirements.

Estimated annual reporting and recordkeeping burden: The total estimated annual hours burden is 3,630,060 hours for the current information collection requirements of the Rule and 1,500,400 additional burden hours for the proposed amendments,[3] or a total of 5,130,460 burden hours. This burden consists entirely of reporting and disclosure requirements; the Rule does not impose any independent recordkeeping requirements. As noted above, the burden figures for the Rule's information collection requirements reflect an estimated 12 percent industry growth since OMB's previous approval of the requirements. The burden hour estimate for each requirement (i.e., reporting or disclosure) was then multiplied by a special ''blended'' wage rate (expressed in dollars per hour), based on the particular skill mix needed to carry out that requirement, to determine the total annual cost of that requirement. The blended rate

[1] The Rule was originally promulgated as the ''Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992'' and was known as the ''900-Number Rule.'' It will be renamed the ''Trade Regulation Rule Concerning Pay-Per-Call Services and Other Telephone-Billed Purchases'' and is referred to in the Commission's notice of proposed rulemaking and in this document as the ''Pay-Per-Call Rule.''

[2] Neither the Rule nor the proposed amendments contain any recordkeeping requirements that would be subject to the PRA.

[3] This figure was erroneously stated as ''1,499,200'' in the Commission's notice of proposed rulemaking.

calculations were based on the following skill categories and average wage rates: $65/hour for professional (attorney) services; $15/hour for skilled clerical workers; $25/hour for computer programmers; and $50/hour for management time. Annual burden hour estimates (and the estimated total cost of those hours) have been provided below.

The burden estimates do not contain a separate set of figures for other annual ''cost'' burdens, if any—*i.e.,* (a) capital and start-up costs or (b) operation, maintenance and purchase of outside services not already reflected in the above burden hour estimates and associated annual costs. Capital or start-up costs are generally subsumed in activities otherwise undertaken in the ordinary course of business (*e.g.,* business records from which only existing information must be reported to the Commission, pay-per-call advertisements or audiotexts to which cost or other disclosures are added, *etc.*). To the extent that entities incur operating or maintenance expenses, or purchase outside services to satisfy the Rule's requirements, staff believe those expenses are also included in (or, if contracted out, would be comparable to) the burden hours and estimated annual burden estimates provided below (where such expenses are labor-related), or are otherwise included in the ordinary cost of doing business (where the expenses are other than labor-related).

Reporting Requirement

This requirement is currently set forth in § 308.6 of the Rule, to be amended and redesignated § 308.19(a). The estimated hours burden for this reporting requirement (*i.e.,* to provide certain information to the Commission upon request) is 140 hours annually (based on 25 common carriers each spending 5 hours annually plus 12 percent) at an average wage rate of $65/hour (100 percent of each hour for attorney services) or a total annual cost of $9100.

Disclosure Requirements

(1) *Advertising.* The advertising disclosure requirements of the current Rule would be consolidated into §§ 308.3, 308.4 and 308.7 of the Rule, as amended. The current estimated annual burden on the industry is 123,200 hours. As explained in the Commission's notice of proposed rulemaking, this figure reflects the Commission's original estimate of 20,000 vendors each making certain basic cost disclosures (one hour per disclosure) in three advertisements for pay-per-call services (60,000 burden hours total) plus one hour for an additional disclosure in each of the estimated 50 percent of ads that are directed to individuals under 18 (30,000 burden hours) and each of the estimated 30 percent of all pay-per-call ads relating to sweepstakes or information on federal programs (18,000 burden hours), or a total of 108,000 burden hours, which was rounded up to 110,000 and then increased to 123,200 hours to reflect 12 percent estimated industry growth. The total estimated annual cost of these burden hours is $4,743,200, using a blended wage rate of $38.50/hour (40 percent attorney services, 50 percent skilled clerical workers, and 10 percent for management time).

Two proposed amendments, §§ 308.4(a)(1)(iii)(B) and 308.6(b), would add 30,240 annual burden hours to the total, or a total annual cost of $1,164,240, using the blended wage rate of $38.50/hour explained above. The first of these amendments, requiring disclosures when a call is billed on a variable time rate basis, assumes that 20 percent of the estimated 67,200 advertised pay-per-call services (i.e., after the 12 percent increase) would need to contain such a disclosure, thereby accounting for 13,440 burden hours,[4] at an annual cost of $517,440. The burden associated with the second amendment, requiring an audio signal to indicate (i.e., disclose) the end of free time used to advertise certain pay-per-call services, was estimated at 16,800 burden hours, assuming this requirement applies to 25 percent of advertised pay-per-call services, or an annual cost of $646,800.

(2) *Preamble.* The Rule's existing preamble disclosure requirement, set forth in § 308.9, imposes an estimated burden of 10 hours annually, for an annual burden of 672,000 burden hours based on 67,200 advertised pay-per-call services. The cost associated with these burden hours is $25,872,000, using a blended wage rate of $38.50/hour (*i.e.,* similar to the blended rate used for advertising disclosures). As explained in the notice of proposed rulemaking, the estimated burden of a proposed amendment of the preamble disclosure requirement, § 308.4(a)(2)(iii)(B), is one additional hour for approximately 30 percent of the advertised pay-per-call services, or an estimated 20,160 hours, for a total annual cost of $776,160.

(3) *Telephone-billed charges in billing statements.* This requirement is currently set forth in § 308.5(j) of the Rule, which the Commission proposes to redesignate and incorporate into § 308.18, as amended. The blended rate used to calculate the cost of these disclosures was $45.50/hour (50 percent attorney services, 20 percent skilled clerical workers, 20 percent computer programming, and 10 percent for management time). The estimated annual burden of this disclosure requirement was 26,880 hours (*i.e.,* 10 percent of 20,000 vendors making spot checks at 12 hours per spot check, or 24,000 burden hours, plus 12 percent), so the annual cost would be $1,223,040 As explained in the notice of proposed rulemaking, no additional burden is anticipated from any amendments of this requirement.

(4) *Dispute resolution procedures in billing statements.* This disclosure requirement is currently set forth in § 308.7(c), to be redesignated § 308.20, as amended. The blended rate used for these disclosures was $32.50/hour (40 percent computer programming, 20 percent attorney services, 30 percent skilled clerical workers, and 10 percent for management time). As explained in the notice of proposed rulemaking, the estimated hour burden for the annual notice component of this requirement is 7,840 burden hours (based on 1,400 billing entities taking 4 hours to review, revise and provide disclosures annually, plus 12 percent), or a total cost of $254,800. An additional 2,800,000 burden hours would be associated with specific notices in those cases where a customer reports a billing error (*i.e.,* 5 percent of an estimated 50 million calls plus 12 percent, requiring one hour per billing error), or $91,000,000 annually. The additional burden hours for proposed amendments to § 308.2(i) and (j), requiring new disclosures of certain information regarding personal identification numbers issued to customers for access and billing purposes have been estimated at 50,000 hours or an annual cost of $1,625,000. The additional burden hours for proposed amendments to require certain new disclosures in connection with billing dispute resolution, § 308.18(n)(2) and § 308.18(n)(4), would entail 1,400,000 hours for an annual cost of $45,500,000.

Debra A. Valentine,

General Counsel.

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BILLING CODE 6705–01–M

[4] This figure was erroneously stated as ''12,240'' in the Commission's notice of proposed rulemaking.

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—11/08/1999			
20000265	Axcan Pharma, Inc	Schwarz Pharma, A.G	Axcan Schwarz LLC.
20000365	Exodus Communications, Inc	Service Metrics, Inc	Service Metrics, Inc.
20000367	Sara Lee Corporation	Jasper Textiles, Inc	Jasper Textiles, Inc.
20000373	Carl M. and Marie T. Bouckaert	Thomas D. Karol	Pro Group Holdings, Inc.
20000379	Toymax International, Inc	James P. O'Rourke	Kidpower, Inc.
20000380	Linsalata Capital Partners Fund III, L.P	LMP Holding Company	LMP Holding Company.
20000383	Societe Generale	Harry J. Lloyd Charitable Trust	Armchair Shopper, Inc., Consigned Sales of Kansas City, Inc., Cosigned Sales Distributors, Inc., House of Lloyd, Inc., Memorial Wreath Company, Inc.
20000391	KMS Acquisition Company, L.P	Henry A. Panasci, Jr	Ferris Industries, Inc.
20000392	KSM Acquisition Company, L.P	David Ferris	Ferris Industries, Inc.
20000394	Estate of Charles A. Sammons	Swiss Reinsurance Company	Royal Life Insurance Company of New York.
20000395	Congregation of the Sisters of Bon Secours in the U.S.	Franciscan Sisters of the Poor	Franciscan Health Partnership, Inc.
20000400	Schering-Plough Corporation	AtheroGenics, Inc	AtheroGenics, Inc.
20000402	Getty Investment L.L.C	Getty Images, Inc	Getty Images, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—11/09/1999			
20000147	EG&G, Inc	Vivid Technologies, Inc	Vivid Technologies, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—11/10/1999			
20000020	Frontier Oil Corporation	Royal Dutch Petroleum Company	Equilon Enterprises LLC.
20000123	Computer Sciences Corporation	Nichols Research Corporation	Nichols Research Corporation.
20000304	David R. Parker and Jacqueline F. Parker.	Harold Ives	Harold Ives Trucking Co., Terminal Truck Broker, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—11/12/1999			
20000168	Calpine Corporation	Cogeneration Corporation of America	Cogeneration Corporation of America.
20000410	Internet Capital Group, Inc	eMerge Interactive, Inc	eMerge Interactive, Inc.
20000431	Berwind Group Partners	K&W Acquisition Group, LLC	K&W Acquisition Group, LLC.
TRANSACTIONS GRANTED EARLY TERMINATION—11/15/1999			
20000218	Centennial Fund V, L.P	ATG Group, Inc	ATG Group, Inc.
20000229	Anthem Insurance Companies, Inc	Rocky Mountain Hospital and Medical Service.	Blue Cross and Blue Shield of Colorado, Blue Cross and Blue Shield of Nevada.
20000257	iXL Enterprises, Inc	Tessera Enterprise Systems, Inc	Tessera Enterprise Systems, Inc.
20000289	Corporacion EDC, C.A	Convergence Communications, Inc	Convergence Communcations, Inc.
20000294	General Electric Corporation	J.C. Penney Company, Inc	J.C. Penney Company, Inc.
20000312	Manuel DelArroz	SIPEX Corporation	SIPEX Corporation.
20000318	Bell Atlantic Corporation	John W. Kluge	Metromedia Fiber Network, Inc.
20000329	Everett R. Dobson Irrevocable Family Trust.	CenturyTel, Inc	Pacific Telecom Cellular of Alaska RSA #1, Inc.
20000332	Apax Europe IV GP Co. Limited	Invensys plc	BTR Dunlop Holdings (Delaware), Inc.
20000335	Adventist Health System Sunbelt Healthcare Corporation.	University Community Hospital, Inc	University Community Hospital, Inc.
20000351	Associates First Capital Corporation	Petroleos de Venezuela, S.A	CITGO Petroleum Corporation.
20000356	CMGI, Inc	AdKnowledge Inc	AdKnowledge Inc.
20000364	Facilitator Capital Fund Limited Partnership.	Everett Smith Group, Ltd	Sivyer Steel Corporation.

Trans No.	Acquiring	Acquired	Entities
20000366	Bernard Arnault	Inter Parfums, Inc	Inter Parfums, Inc.
20000375	Furman Selz Investors II L.P	Maritrans Inc	Maritrans Inc.
20000376	Kleiner Perkins Caufield & Byers IX–A, L.P.	iSky.net, Inc	iSky.net, Inc.
20000377	TV Guide, Inc	iSky.net, Inc	iSky.net, Inc.
20000378	United Parcel Service of America, Inc	Arthur S. Spiegel	Trans-Border Customs Services, Inc.
20000381	AT&T Corp	iSky.net, Inc	iSky.net, Inc.
20000387	John J. Rigas	AT&T	InterMedia Partners, L.P. TCI of Virginia, Inc.
20000393	WPG Corporate Development Associates V, LLC.	Ramsey Industries, Inc	Ramsey Industries, Inc.
20000408	Software AG (a German company)	SPL World Group B.V	SPL World Group B.V.
20000409	Carl C. Icahn	Global Leisure Travel, Inc	Jetset Tours, Inc.
20000412	Paul G. Allen	Fatbrain.com, Inc	Fatbrain.com, Inc.
20000415	Wind Point Partners, IV, L.P	Golder, Thoma Cressey, Rauner, Fund IV, L.P.	OutSource Partners, Inc.
20000420	Westburne Inc	Consolidated Electrical Distributors, Inc	All-Phase Electric Supply Co.
2000422	AutoNation, Inc	Ronald T. and Billie J. Vanderbeek (husband and wife).	Vanderbeek Motors, Inc. Vanderbeek Olds/GMC Truck Inc.
20000423	Claire's Stores, Inc	Venator Group, Inc	Venator Group Specialty, Inc.
20000425	SCI Systems, Inc	Thomas A. Grant	TAG LLC (in organization).
20000433	Lyndon Insurance Group, Inc	James Beltz	First Protection Company.
20000444	Ecolab Inc	Bobby Cheney	Southwest Sanitary Distributing Company, Inc.
20000445	Compass Group PLC	Joachim Splichal and Christine Splichal	The Patina Group, LLC.
20000452	Norilsk Nickel	Almazjuvelirexport, a Russian state unitary enterprise.	Almaz USA, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—11/16/1999			
20000259	AT&T Corp	The Associated Group, Inc	The Associated Group, Inc.
20000266	Havas Advertising S.A	Ronald D. Greene	Devon Direct Marketing and Advertising, Inc.
20000290	TCW/Latin America Private Equity Partners, LP.	Convergence Communications, Inc	Convergence Communications, Inc.
20000324	LA–Z–Boy Incorporated	LADD Furniture, Inc	LADD Furniture, Inc.
20000388	AT&T	John J. Rigas	Adelphia Cablevision Associates, L.P., Van Buren County Cablevision, Inc.
20000426	Florida Progress Corp	CAE Inc	CAE Vanguard, Inc.
20000441	Polynorm N.V	Christine E. and William Lee Walker, Jr., (husband & wife).	DelWal Corporation.
20000447	Denton County Electric Cooperative, Inc	Cable Plus Holding Company	MultiTechnology Services, L.P.
20000453	Pinnacle Global Group, Inc	Sanders Morris Mundy Inc	Sanders Morris Mundy Inc.
20000456	Omnicom Group Inc	Alan E. Hall	MarketStar Corporation.
20000457	Farmers Insurance Exchange	Foremost Corporation of America	Foremost Corporation of America.
20000459	Sun Microsystems, Inc	Naspers Limited	OpenTV Corp.
20000475	Tyco International Ltd	R.L. Praegitzer	Praegitzer Industries, Inc.
20000480	Gerald W. Schwartz	Meritor Automotive, Inc	Meritor Automative Canada Inc. Meritor Light Vehicle Systems, Inc.
20000484	Ronald S. Haft	Geerlings & Wade, Inc	Geerlings & Wade, Inc.
20000486	Lucor, Inc	James H. Maynard	Quick 10 Corporation.
20000488	Alfred Poe	Tricon Global Restaurants, Inc	Taco Bell Corp.
20000502	Morgan Stanley Dean Witter Capital Partners IV, L.P.	Charterhouse Equity Partners III, L.P	Ashley One, Inc.
20000503	Charterhouse Equity Partners III, L.P	Morgan Stanley Dean Witter Capital Partners IV, L.P.	TravCorps Corporation.
TRANSACTIONS GRANTED EARLY TERMINATION—11/17/1999			
20000200	Flowers Industries, Inc	The Kroger Company	The Kroger Company.
20000340	Gateway, Inc	America Online, Inc	America Online, Inc.
20000434	North Shore-Long Island Jewish Health System, Inc.	Peconic Health Corporation	Peconic Health Corporation.
TRANSACTIONS GRANTED EARLY TERMINATION—11/18/1999			
20000096	Abbott Laboratories	Glaxo Wellcome plc	Glaxo Wellcome Inc., Gaxo Group Limited.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–32388 Filed 12–14–99 8:45 am]

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FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—10/25/1999			
19994714	TPG Partners II, L.P	Zhone Technologies, Inc	Zhone Technologies, Inc.
19994723	Plainwell Shasta Holdings Inc	General Electric Company	Shelby Tissue, Inc.
19994792	ATMI, Inc	Byron A. Denenberg	MST Analytics, Inc.
19994803	Richard S. Crawford	Kobe Steel, Ltd	Glastic Corporation.
20000062	The Tokyo Electric Power Company, Incorporated.	Orion Power Holdings, Inc	Orion Power Holdings, Inc.
20000063	Mitsubishi Corporation (a Japanese corporation).	Orion Power Holdings, Inc	Orion Power Holdings, Inc.
20000066	Shamrock Holdings, Inc	Koor Industries, Ltd	Koor Industries, Ltd.
20000077	SunGard Data Systems Inc	Gad and Marlene Janay (husband and wife).	Complex Systems, Inc.
20000082	Associates First Capital Corporation	Charles M. Jorgensen	Premium Lease & Finance Sales, Inc.
20000088	Ronald W. Burkle	Cyrk, Inc	Cyrk, Inc
20000097	Veeco Instruments, Inc	Ion Tech, Inc	Ion Tech, Inc.
20000106	El Paso Energy Corporation	Bonneville Pacific Corporation	Bonneville Pacific Corporation.
20000115	Vaisala, Oyj	Tech Sym Corporation	Enterprise Electronics Corporation, Inc.
20000117	H.I.G. Investment Group, L.P	ValueVision International, Inc.	Catalog Ventures, Inc.
20000118	Rollins Truck Leasing Corp	Jesse H. Keen	Keen Leasing, Inc.
20000149	Lend Lease Corporation Limited	Peninsular and Oriental Steam Navigation Company.	Bovis Group plc.
TRANSACTIONS GRANTED EARLY TERMINATION—10/26/1999			
19994795	Carl Frieder Mahr	Esterline Technologies Corporation	Federal Products Co.
20000093	The Goldman Sachs Group, Inc	Western Wireless Corporation	Western Wireless Corporation.
20000094	Aggregate Industries, plc	Stewart V. Golden	The Golden Companies.
20000119	Rollins Truck Leasing Corp	William R. Keen	Keen Leasing, Inc.
20000122	Kleiner Perkins Caufield & Byers VIII, L.P..	HomeGrocer.com, Inc	HomeGrocer.com, Inc.
20000124	Ennis Business Forms, Inc	Adams McClure, Inc	Adams McClure, Inc.
20000126	Fleet Boston Corporation	Russell V. Umphenour Jr	Lee's Company Operations, Inc., Lee's Franchise Services, Inc., Mrs. Winner's L.P., Winner's Franchise Services, LLC.
20000127	Marmon Holdings, Inc	Benjamin Rosenzweign	Azco Steel Company.
20000129	Citigroup Inc	Adam Wuest, Inc	Adam Wuest, Inc.
20000138	Lincoln National Corporation	Fortis (NL) N.V	John Alden Life Insurance Company.
20000142	Security First Technologies Corporation	VerticalOne Corporation	VerticleOne Corporation.
20000148	PACCAR, Inc	Rush Enterprises, Inc	Rush Enterprises, Inc.
20000150	Resource Healthcare of America, Inc	Glen Dearth	Dearth Management, Inc.
20000151	Koninklijke Philips Electronics N.V	Hewlett-Packard Company	Hewlett-Packard Company.
20000152	Hewlett-Packard Company	Koninklijke Philips Electronics N.V	LumiLEDs International BV.
20000157	Madison Dearborn Capital Partners III, L.P..	Zhone Technologies, Inc	Zhone Technologies, Inc.
20000161	General Electric Company	Plug Power Inc	Plug Power Inc.
20000162	Michael J. Cudahy	Plug Power Inc	Plug Power Inc.
20000163	Mechanical Technology Inc	Plug Power Inc	Plug Power Inc.
20000166	Swets & Zeitlinger Holding N.V	Blackwell Limited	Readmore Academic Services, Inc., B.H. Blackwell Limited.
20000167	Blackwell Limited	Swets & Zeitlinger Holding N.V	Swets & Zeitlinger B.V.
20000169	UICI	HealthPlan Services Corporation	HealthPlan Services Corporation.
20000170	Renal Care Group, Inc	Renal Disease Management by Physicians, Inc.	Renal Disease Management by Physicians, Inc.

Trans No.	Acquiring	Acquired	Entities
20000173	Partners HealthCare System, Inc	Pentucket Medical Associates, Inc	Pentucket Medical Associates, Inc.
20000174	Cable and Wireless plc	NTL Incorporated	NTL Incorporated.
20000175	New Enterprise Associates VIII, Limited Partnership.	Zhone Technologies, Inc	Zhone Technologies, Inc.
20000176	DTE Energy Company	Plug Power, Inc	Plug Power Inc.
20000177	Clear Channel Communications, Inc	Joshua Feigenbaum	MJI Broadcasting, Inc.
20000178	USA Truck, Inc	CARCO Capital Corporation	CARCO Carrier Corporation.
20000179	The Chase Manhattan Corporation	Huntington Bancshares Incorporated	Huntington Bancshares Incorporated.
20000181	Novell, Inc	Whittman-Hart, Inc	Whittman-Hart, Inc.
20000182	Tyco International Ltd	R. Richard Williams	Valquip Corporation, a Pennsylvania corporation.
20000183	Amazon.com, Inc	HomeGrocer.com, Inc	HomeGrocer.com Inc.
20000185	U.S. Concrete, Inc	B. Thomas & Sarah M. Stover	AFTM Corporation, Fendt Transit Mix, Inc., Hunter Equipment Company.
20000187	Corporacion Durango, S.A. de C.V	Howard Gilman Foundation, Inc	Gilman Paper Co., Converting Corp., St. Marys Railroad Corp.
20000188	Wells Fargo & Company	Eastdil Realty Company, L.L.C	Eastdil Realty Company, L.L.C.
20000190	Bell Atlantic Corporation	NTL Incorporated	NTL Incorporated.
20000192	Yucaipa One-Stop Partners, L.P	Digital On-Demand, Inc	Digital On-Demand, Inc.
20000193	Kulen Capital. L.P	U.S. Office Products Company	Action Wholesale Services, Inc
20000194	John Rutledge Partners II, L.P	FPE Holdings, Inc	FPE Holdings, Inc.
20000196	homestore.com, Inc	Eugene C. Pulliam Trust	Central Newspapers, Inc.
			The Homebuyer's Fair, Inc., FAS-Hotline, Inc.
20000199	HWH Capital Partners, L.P	Olympus Growth Fund II, L.P	AMN Holdings, Inc.
20000201	Leggett & Platt, Incorporated	Dann 1999 Family Trust	Dann Dee Display Fixtures, Inc.
20000202	Code, Hennessy & Simmons IV, L.P	Ernest M. Aguilar	EWMJ, Inc. dba Packaging Plus.
20000203	Genus, plc	Protein Genetics, Inc	ABS Global, Inc.
20000204	Outback Steakhouse, Inc	Tedesco Steakhouse, Inc	Tedesco Steakhosue, Inc.
20000206	Safeguard Scientifics, Inc	Vitts Networks, Inc	Vitts Networks, Inc.
20000208	MBNA Corporation	Sun Trust Banks, Inc	Sun Trust Bank Card, N.A., Crestar Bank.
20000210	Albert J. DiMarco	Checkers Drive-in Restaurants, Inc	Checkers Drive-in Restaurants, Inc.
20000216	Media/Communications Partners III Limited Partnership	Don Mosenfelder	Educational Design, Inc.
20000250	Hagemeyer N.V	Margaret S. Waltersdorf	Tristate Electrical & Electronics Supply Co., Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—10/27/1999			
20000036	WPP	InteliQuest information Group, Inc	IntelliQuest Information Group, Inc.
20000241	Ominicom Group, Inc	Scirex Corporation	Scirex Corporation.
TRANSACTIONS GRANTED EARLY TERMINATION—10/28/1999			
19994715	KKR 19996 Fund L.P	Zhone Technologies, Inc	Zhone Technologies, Inc.
20000013	Guidant Corporation	Cardio Thoracic Systems, Inc	Cardio Thoracic Systems, Inc.
20000018	Western Wireless Corporation	KO Communications, Inc	KO Communications, Inc.
20000027	Odyssey Investment Partners Fund, LP	John and Georgiana Warta (husband and wife)	PF Net Holdings, Limited.
20000033	Western Wireless Corporation	NetWireless, Inc	NetWireless, Inc.
20000067	Alta Communications VII, L.P	ATG Group, Inc	ATG Group, Inc.
20000091	Inhale Therapeutic Systems, Inc	Alliance Pharmaceutical Corp	Alliance Pharmaceutical Corp.
20000100	Chase Manhattan Corporation, (The)	Intelisys Electronic Commerce, Inc	Intelisys Electronic Commerce, Inc.
20000116	Forstmann Little & Co. Equity Partnership—V, L.P	Intelisys Electronic Commerce, Inc	Intelisys Electronic Commerce, Inc.
20000214	ANCO Computer (H.K.) Co., Ltd	Marcel and Christine Liang (husband and wife)	ASI Corp.
20000215	Marcel and Christine Liang, (husband and wife)	ANCO Computer (H.K.) Co., Ltd	ANCO Computer (H.K.) Co., Ltd.
20000217	BVR, LLC	Intelisys Electronic Commerce, Inc	Intelisys Electronic Commerce, Inc.
20000221	Ducommun Incorporated	Jordan Industries, Inc	Parsons Precisions Products, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—10/29/1999			
20000034	Midcoast Energy Resources, Inc	K-Pipe Holdings Partners, L.P	Kansas Pipeline Company, MarGasCo Partnership, Mid-Kansas Partnership, Riverside Pipeline Company, L.P.
20000072	Ford Motor Company	AutoNation, Inc	BH Cars, Inc. dba Beverly Hills Ford
20000078	Ripplewood Partners, L.P	Glenayre Technologies, Inc	Western Multiplex Corporation.
20000184	Kent Electronics Corporation	The Stephen James & Patricia Sharon Culpepper 1997 Trust	Orange Coast Cabling, Inc, Orange Coast Datacomm, Inc.
20000207	Sonera Corporation	Telephone and Data Systems, Inc. Voting Trust	Aerial Communications, Inc.

Trans No.	Acquiring	Acquired	Entities
TTRANSACTIONS GRANTED EARLY TERMINATION—11/01/1999			
20000089	Richard M. Ferrari	Guidant Corporation	Guidant Corporation.
20000136	VIAG AG	Land O'Lakes, Inc	Alex Fries Inc.
20000137	Lincoln National Corporation	Fortis (B)	John Alden Life Insurance Company.
20000222	Clear Channel Communications, Inc	Rigdon O. Dees, III	Rigdon O. Dees, III.
20000242	The Interpublic Group of Companies, Inc	The Cassidy Companies, Inc	The Cassidy Companies, Inc.
20000283	Ethical Holdings plc	Elan Corporation, plc	Carnick Laboratories, Inc.
20000286	Investor AB	IntraBiotics Pharmaceuticals, Inc	IntraBiotics Pharmaceuticals, Inc.
TTRANSACTIONS GRANTED EARLY TERMINATION—11/02/1999			
20000099	Hogg Robinson, plc	Stiching, Dogwood, Curacao, Netherlands, Antillies	World Travel Technologies, LLC.
20000105	The Bank of New York Company, Inc	Charles T. Foley	Estabrook Capital Management, Inc.
20000144	Munchener Ruckversicherungs-Gesellschaft	American Insurance Service, Inc	American Insurance Service, Inc.
20000155	Interpublic Group of Companies, Inc	Peter Fratarcangelo	International Pharmaceutical Research, Inc.
20000180	Reuters Group PLC	Xerox Corporation	InConcert, Inc.
20000223	Berkshire Hathway, Inc	Barry Tatelman	Jornash, Inc., Javon, Inc.
20000224	Berkshire Hathway, Inc	Eliot Tatelman	Jornash, Inc., Javon, Inc.
20000225	Berkshire Hathway, Inc	Jordan Furniture Co	Jordan Furniture Co.
20000226	Berkshire Hathway, Inc	Jorwest LLC	Jorwest LLC.
20000230	Lumbermens Mutual Casualty Company	Market Corporation	Investors Insurance Company of America.
20000232	Gilbert Global Equity Partners, L.P.	World Access, Inc	World Access, Inc.
20000234	HCC Insurance Holdings, Inc	Centris Group, Inc	Centris Group, Inc.
20000243	Lyndon Insurance Group, Inc	ManagedComp Holdings, Inc	ManagedComp Holdings, Inc.
20000247	Madison Dearborn Capital Partners III, L.P	Outsourcing Solutions Inc	Outsourcing Solutions, Inc.
20000252	Sidney B. Deboer	Frank M. Stinson	Roundtree of Idaho, Inc.
20000253	Paul G. Allen	VaxGen, Inc	VaxGen, Inc.
20000255	Cisco Systems, Inc	Nuance Communications	Nuance Communications.
20000258	Sepracor Inc	Rhone-Poulenc S.A	Rhone-Poulenc Rorer S.A.
20000260	Michael R. Hollis	Racetrac Petroleum, Inc	Racetrac Petroleum, Inc.
20000261	Global Crossing Ltd	Racal Electronics PLC (an English company).	Racal Telecommunications, Inc.
20000267	Reliant Energy, Incorporated	Southland Industries	Southland Industries.
20000270	Intel Corporation	Stanford Telecommunications, Inc	Stanford Telecommunications, Inc.
20000274	Morgenthaler Venture Partners IV, L.P	Nuance Comunications	Nuance Communications.
20000275	Hummer Winblad Venture Partners IV, L.P	HomeGrocer.com, Inc	HomeGrocer.com, Inc.
20000276	James Barksdale	HomeGrocer.com, Inc	HomeGrocer.com, Inc.
20000277	Macromedia, Inc	Andromedia, Inc	Andromedia, Inc.
20000306	United Technologies Corporation	Cade Industries, Inc	Cade Industries, Inc.
20000307	HMK Enterprises, Inc	Russell Greenberg	Durand Holding Corp.
20000316	Carlyle Partners III, L.P	Genstar Capital Partners II, L.P	Panolam Industries Holdings, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—11/03/1999			
20000070	SNPE S.A	Mr. Richard Shotell	Vanchem, Inc., VanDeMark Chemical Company, Inc.
20000071	SNPE S.A	Mr. Dirk VanDeMark	Vanchem, Inc., VanDeMark Chemical Company, Inc.
20000110	Tabacalera S.A	Societe Nationale d'Expoitation Industrielle des Tabacs.	Societe Nationale d'Expoitation Industrielle des Tabacs.
20000263	EarthLink Network, Inc	MindSpring Enterprises, Inc	MindSpring Enterprises, Inc.
20000264	MindSpring Enterprises, Inc	EarthLink Network, Inc	EarthLink Network, Inc.
20000323	The Chase Manhattan Corporation	Vision Twenty-One, Inc	Vision Twenty-One, Inc.
20000325	American Express Company	Electronic Data Systems Corporation	EDS Shamrock Corporation.
TRANSACTIONS GRANTED EARLY TERMINATION—11/04/1999			
2000014	M. Francois Pinault	Samsonite Corporation	Samsonite Corporation.
TRANSACTIONS GRANTED EARLY TERMINATION—11/05/1999			
19994588	The LTV Corporation	Paul G Desmarais	Copperweld Canada, Inc., Copperweld Corporation.
19994589	The LTV Corporation	Albert Frere	Copperweld Canada, Inc., Copperweld Corporation.
20000069	Country Mutual Insurance Company	Holyoke Mutual Insurance Company	Holyoke Mutual Insurance Company.
20000132	Siemens AG	NeoPoint, Inc	NeoPoint, Inc.

Trans No.	Acquiring	Acquired	Entities
20000146	SAP Aktiengesellschaft Systeme, Anwendungen Produkte in der	Schwab-Stiftung fur wirtgchaftliche und Soziale Entwicklung	Industry to Industry, Inc.
20000171	CBS Corporation	Big Entertainment, Inc	Big Entertainment, Inc.
20000240	Leiner Health Products Group Inc	Leslie L. Dan	Granutec, Inc.
20000245	Wells Fargo & Company	ATG Group, Inc	ATG Group, Inc.
20000246	Big V Holding Corp	ShopRite of Pennington, Inc	Shoprite of Pennington, Inc.
20000248	Bain Capital Fund VI, L.P	R.R. Donnelley & Sons Company	Stream International Inc.
20000251	Interpump Group S.p.A	Muncie Power Products, Inc	Muncie Power Products, Inc.
20000271	AT&T Corp	Knology, Inc	Knology, Inc.
20000272	ITC Holding Company, Inc	Knology, Inc	Knology, Inc.
20000273	May Department Stores Company, a Delaware corporation	Zions Reserve Trust	Zions Co-operative Mercantile Institution.
20000281	Richard Li	CMGI, Inc	CMGI, Inc.
20000288	Ford Motor Company	Barnes Family Trust	Fremont Ford Sales, Inc.
20000300	Bank of Montreal	Thomas E. Burke	Burke, Christensen & Lewis Securities, Inc.
20000301	Bank of Montreal	Richard L. Christensen	Burke, Christensen & Lewis Securities, Inc.
20000303	Quintiles Transnational Corp	Mediconsult.com, Inc	Mediconsult.com, Inc.
20000309	The New York Times Company	The Chronicle Publishing Company	The Chronicle Publishing Company.
20000328	United Parcel Service of America, Inc	Peter F. Ullrich	Challenge Air Cargo, Inc.
20000330	PeopleSoft, Inc	Vantive Corporation (The)	Vantive Corporation (The).
20000339	Sisters of St. Francis Health Services, Inc	Columbia/HCA Healthcare Corporation	Olympia Fields Regional Osteophatic Medical Center.
20000341	America Online, Inc	Gateway, Inc	Gateway, Inc.
20000344	El Paso Energy Corporation	Central and South West Corporation	Orange Cogeneration Limited Partnership. Polk Power Parners, LP.
20000345	Central and South West Corporation	El Paso Energy Corporation	Newco 1 (Orange Subsidiary, Newco 2 (Polk Subsidiary).
20000347	Michael Haentjes	Sony Corporation	RED Distribution Inc.
20000349	Inter-Tel, Incorporated	Executone Information Systems, Inc	Executone Information Systems, Inc.
20000350	Willis Stein & Partners II, L.P	Aavid Thermal Technologies, Inc	Aavid Thermal Technologies, Inc.
20000354	Manufacturers' Services Limited	3Com Corporation	3Com Corporation.
20000357	Evening Telegram Company	Young Broadcasting Inc	Young Broadcasting of LaCrosse, Inc.
20000358	Welsh, Carson, Anderson & Stowe VIII, L.P	Welsh, Carson, Anderson & Stowe VII, L.P.	GKN Holdings, Inc.
20000359	Group 1 Automotive, Inc	Ira J. Rosenberg and Judith A. Rosenberg (husband & wife)	IRA Buick Pontiac, LLC, IRA Subaru, LLC, IMG Company, LLC, North Shore Auto Brokers, Inc.
20000360	Goup 1 Automotive, Inc	David E. Rosenberg	IRA Chrysler Products, Inc. (dba IRA Jeep), IRA Motor Group (dba IRA Lexus), IRA Motor Imports, Inc. (dba IRA Mazda, Isuzu, Porsche, Audi).
20000361	Welsh, Carson, Anderson & Stowe VII, L.P	Professional Training Services, Inc	Professional Training Services, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–32389 Filed 12–14–99; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisition during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—10/13/1999			
19994626	Longs Drug Stores Corporation	Rite Aid Corporation	Thrifty Payless, Inc.

Trans No.	Acquiring	Acquired	Entities
19994808	Wilfred Uytengsu	Petre Point, LLC, a Connecticut limited liability company.	Anderson Bakery Company, Inc., Bon Ton Foods, Inc., Anderson Snack Foods, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—10/14/1999			
19994472	Monitor Clipper Equity Partners, L.P	BP Amoco p.l.c	Amoco Fabrics and Fibers Company.
19994501	Century Tel, Inc	GTE Corporation	GTE North Incorporated.
19994627	Coleman Cable Acquisition Corporation LLC.	Borg-Warner Automotive, Inc	Coleman Cable Systems, Inc.
19994660	Martin Weinberg	Leigh Steinberg	Steinberg & Moorad.
19994661	Martin Weinberg	Jeffrey S. Moorad	Steinberg & Moorad.
19994677	Hanson PLC	Rex Family Limited Partnership	Superior Products Company.
19994678	MJD Communications, Inc	The Orwell Telephone Company	The Orwell Telephone Company.
19994680	Daifuku Co., Ltd	Brooks Automation, Inc	Brooks Automation, Inc.
19994690	Carl C. Icahn	Federal Mogul Corp	Federal Mogul Corp.
19994718	Hilton Hotels Corporation	Promus Hotel Corporation	Promus Hotel Corporation.
19994722	Media/Communications Partners III Limited Partnership.	Philip D. Cohen and Marcia Cohen, (husband and wife).	Main Line Book Company.
19994744	Hicks, Muse, Tate & Furst Equity Fund III, L.P.	General Electric Company	Pegasus Broadcasting of San Juan, L.L.C.
19994754	Amdocs Limited	International Telecommunication Data Systems, Inc.	International Telecommunication Data Systems, Inc.
19994756	4Front Technologies, Inc	Martin D. Sass	CVSI, Inc.
19994760	American Express Company	EBarter, Inc	EBarter, Inc.
19994762	Qwest Communications International Inc.	Philip F. Anschutz	Anschutz Digital Media, Inc., Precision Systems, Inc.
19994764	Martin Marietta Materials, Inc	Larry J. Earnest	L.J. Earnest, Inc.
19994772	United Rentals, Inc	Brian J. Boland	Boland Rentals, Inc.
19994773	BCI Growth V, L.P	Pon Holdings, B.V	Protocol Holdings Inc.
19994774	Willis Stein & Partners II, L.P	Pon Holdings B.V	Protocol Holdings, Inc.
19994781	Washington Mutual, Inc	CNB Bancshares, Inc	Peoples Security Finance Company, Inc.
19994782	Pon Holdings B.V	Gerald R. Risch	Material Handling Services, Inc.
19994784	The Veritas Capital Fund, L.P	Advance Technical Products, Inc	Advance Technical Products, Inc.
19994786	Fortune Brands, Inc	Miroslaw Nowak	NHB Group Ltd.
19994794	Golder, Thoma, Cressey, Rauner Fund V, L.P.	Delux Corporation	N.R.C. Holding Corporation, United Creditors Alliance International Limited.
19994798	Aurora Foods Inc	Kellogg Company	The Eggo Company.
19994799	Transit Group, Inc	Land Transportation, LLC	Land Transportation, LLC.
19994802	H&R Block, Inc	Ernest J. Olde	Financial Marketing Services, Inc., Olde Financial Corporation.
20000002	CRH plc	Franklin T. Crooker	Harry C. Crooker & Sons, Inc., Maine Gravel Services, Inc.
20000003	CRH plc	Theodore D. Crooker	Harry C. Crooker & Sons, Inc., Maine Gravel Services, Inc.
20000005	Jefferson-Pilot Corporation	The Guarantee Life Companies Inc	The Guarantee Life Companies Inc.
20000007	ITT Industries, Inc	Stanford Telecommunications, Inc	Stanford Telecommunications, Inc.
20000011	U.S. Foodservice	Superior Products Manufacturing Company.	Superior Products Mfg. Co. Limited Partnership.
20000021	Mead Corporation (The)	Lewis B. Cullman	Cullman Ventures, Inc.
20000022	Suburban Propane Partners, L.P	SCANA Corporation	SCANA Propane Gas, Inc., SCANA Propane Supply, Inc.
20000031	Bank of America Corporation	David K. Reinke	Parts Now Incorporated.
20000037	Furman Seiz Investors II L.P	James C. Marlas	Mickelberry Communications Incorporated.
TRANSACTIONS GRANTED EARLY TERMINATION—10/15/1999			
19994641	Texton Inc	InteSys Technologies, Inc	InteSys Technologies, Inc.
19994681	Brooks Automation Inc	Daifuku Co., Ltd	AutoSimulations, Inc., Auto-Soft Corporation.
19994710	Blackstone CCI Capital Partners L.P	Robert R. Mac Cormack Trust U/W dated 05/09/73.	Colorado 4—Park Limited Partnership, Sangre De Cristo Cellular of Colorado Limited Partnership, Smoky Hill Cellular of Colorado Limited Partnership.
19994733	Invemed Catalyst Fund, L.P	Unifi, Inc	Unifi, Inc.
19994758	The Hearst Trust	Internet Broadcasting Systems, Inc	Internet Broadcasting Systems, Inc.
19994783	The Tokio Marine and Fire Insurance Co. Ltd.	Loews Corporation	First Insurance Company of Hawaii, Ltd.
19994805	Puget Sound Energy, Inc	Bryan Family Trust	Encogen Northwest, L.P.
20000008	General Electric Company	ChannelPoint, Inc	ChannelPoint, Inc.

Trans No.	Acquiring	Acquired	Entities
20000009	ChannelPoint, Inc	General Electric Company	First Colony Life Insurance Company.
TRANSACTIONS GRANTED EARLY TERMINATION—10/19/1999			
19994699	General Motors Corporation	Ira Leon Rennert	AM General Corp.
19994721	General Electric Company	Crown Castle International Corp	Crown Castle International Corp.
19994779	World Access, Inc	Jud L. Sedgwick Grandchildren's Trust	FaciliCom International, Inc.
19994780	Jud L. Sedgwick Grandchildren's Trust	World Access, Inc	World Access, Inc.
19994787	Walter J. Burmeister	World Access, Inc	World Access, Inc.
19994793	MCI WorldCom	Wireless One, Inc	Wireless One, Inc.
20000006	Cisco Systems, Inc	KPMG LLP	KPMG Consulting, Inc.
20000010	Thomas T. Gores	NetLojix Communications, Inc. a Delaware Corporation.	Matrix Telecom, Inc.
20000012	Jose P. Bared	Chiltonshire, N.V	REWJB Dairy Plant Associates, REWJB Gas Investments, REWJB Investments.
20000015	New Lexington Clinic P.S.C	PhyCor, Inc	PhyCor of Kentucky, LLC, PhyCor Real Estate, LLC.
20000016	Bradford Equities Fund, LP	Ygal Sonenshine	Raygal Design Associates, Inc.
20000025	UAL Corporation	GetThere.com, Inc	GetThere.com, Inc.
20000028	Jack B. Binion	Empress Entertainment, Inc	Empress Casino Hammond Corp., Empress Casino Jollet Corp.
20000029	Stronach Trust	Marie Denise DeBartolo York	Thistledown, Inc.
20000030	Stronach Trust	Edward J. DeBartolo	Thistledown, Inc.
20000035	INEOS Acrylics Limited	Imperial Chemical Industries PLC	ICI Arcylics GmbH, ICI Japan Ltd., ICI Acrylics Inc., ICI Acrylics Holland B.V., ICI France SA.
20000038	O. Bruton Smith	Freeland Holdings, Inc	Freeland Holdings, Inc.
20000043	Highland Capital Partners IV Limited Partnership.	Paul G. Allen	Mercata, Inc.
20000046	United Petroleum Corporation	Jose P. Bared	F.S. Convenience Stores, Inc.
20000048	National City Corporation	Hugo E. Pimienta	AccuBanc Mortgage Corporation.
20000049	MedImmune, Inc	U.S. Bioscience, Inc	U.S. Bioscience, Inc.
20000051	Donaldson Company, Inc	Air-Maze Corporation	Air-Maze Corporation.
20000053	First American Financial Corporation	Five Star Holdings, Inc	Five Star Holdings, Inc.
20000054	Bell Atlantic Corporation	Bell Atlantic Corporation	Portland Cellular Partnership.
20000055	Code, Hennessy & Simmons, IV, L.P	Kranson Industries, Inc	Kranson Industries, Inc.
20000056	Tyco International Ltd.	Precision Castparts Corp	Penberthy, Inc.
20000057	FS Equity Partners IV, L.P., a Delaware limited partnership.	Tyco International Ltd.	Sherwood Services AG, Tyco Healthcare Group LP.
20000058	Cisco Systems, Inc	Webline Communications Corporation	Webline Communications Corporation.
20000059	Harris Corporation	Roger S. Penske	Terion, Inc.
20000060	Media/Communications Partners III Limited Partnership.	Henry Trentman	Recorded Books, Inc., et. al.
20000064	Rice Partners II, L.P	Restaurants Unlimited, Inc	Restaurants Unlimited, Inc.
20000075	Barnes & Noble, Inc	Leonard Riggio	Babbage's Etc. LLC.
20000080	McWane, Inc	MTC Investors LLC	Manchester Tank & Equipment Co.
20000081	Metals USA, Inc	Allmet Building Products, Inc	Allmet Building Products, Inc.
20000083	Douglas J. Von Allmen	Leighton Reid and Sara Reid (husband and wife).	Ace Beauty Supply Company, Inc.
20000084	J. Thomas Hurvis	Hoechst Aktiengesellschaft	Celanese Ltd.
20000095	Liz Claiborne, Inc	Anthony Podell	Podell Industries Incorporated.
20000102	Castle Harlan Partners III, L.P	The SK Equity Fund, L.P	Wilshire Restaurant Group, Inc.
20000107	TPG Partners II, L.P	Genesis Health Ventures, Inc	Genesis Health Ventures, Inc.
20000108	Cypress Merchant Banking Partners, L.P.	Genesis Health Ventures, Inc	Genesis Health Ventures, Inc.
20000120	Bernard Arnault, an Individual	TAG Heuer International SA	TAG Heuer International SA.
20000125	Omnicom Group Inc	M/A/R/C Inc	M/A/R/C Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—10/21/1999			
19994597	General Electric Company	Matthew W. Prucka and Sheryl P. Prucka.	Prucka Engineering, Inc.
19994748	WPP Group plc	Gregg Wood	Diagnostic Research, Inc.
19994749	WPP Group plc	Marc Agostini	Diagnostic Research, Inc.
19994752	American General Corporation	Financial Life Companies, Inc	Financial Life Companies, Inc.
19994791	ING Groep N.V	ING Groep N.V	Clarion Realty Services, LLC, Clarion Partners, LLC
19994797	Compania Roca Radiadores, S.A	Keramik Holding AG Laufen	Laufen Ceramics, Inc.
19994804	Tyco International Ltd	Siemens Aktiengesellschaft	Siemens Aktiengesellschaft
20000087	TCV III (Q), L.P	ICON Holding Corp	ICON Holding Corp.

Trans No.	Acquiring	Acquired	Entities
20000098	Select Medical Corporation	NovaCare, Inc	CMC Center Corporation, Industrial Health Care Company, Inc., NovaCare Occupational Health Services, NovaMark, Inc., RehabClinics, Inc.
20000103	Liberty Mutual Insurance Company	ACE Limited	ACE Limited.
20000109	Texas Industments Incorporated	Power Trends, Inc	Power Trends, Inc.
20000130	Marmon Holdings, Inc	Harold R. Rubin	Stevens-Lee Company.
TRANSACTIONS GRANTED EARLY TERMINATION—10/22/1999			
19992220	El Paso Energy Corporation	Sonat Inc	Sonat Inc.
19993582	Suez Lyonnaise des Eaux	Nalco Chemical Company	Nalco Chemical Company.
19994199	VNU N.V	Nielson Media Research, Inc	Nielsen Media Research, Inc.
19994702	Roll-Royce plc	Vickers plc	Vickers plc.
20000085	Baker Communications Fund, L.P	Akamai Technologies, Inc	Akamai Technologies, Inc.
20000128	Paul G. Allen	Jay Walker	Priceline WebHouse Club, Inc., Vulcan Ventures, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–32390 Filed 12–14–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Call for Comments on Draft Standards on Culturally and Linguistically Appropriate Health Care and Announcement of Regional Informational Meetings on Draft Standards

AGENCY: Office Secretary OS/Office of Public Health and Science, Office of Minority Health, DHHS.

ACTION: Notice.

SUMMARY: The DHHS Office of Minority Health announces the publication of an solicitation of public comments on draft national standards on culturally and linguistically appropriate health care. The 120-day comment period, beginning January 1, 2000, will include three regional meetings on the draft standards. Individuals and organizations are encouraged to submit their views on the 14 draft standards and the accompanying commentary. The national standards, as revised according to comments received, will be published in a final version in the fall of 2000.

DATES: The comment and submission period is January 1 through April 30, 2000.

ADDRESS: (1) By mail, comments postmarked no later than April 30, 2000, can be submitted to: CLAS Standards, c/o HHS Office of Minority Health, Rockwall II, 5515 Security Lane, #1000, Rockville, MD 20852. Comments sent by courier will be accepted until 5 PM EST on April 30. Comments may also be submitted electronically by email to: OMHRC__Standards@IQSolutions.com or through the Office of Minority Health Resource Center WebPages at www.omhrc.gov/clas.

(2) Individuals may register for one of the regional meetings by using the online registration form at www.omhrc.gov/clas. To request a registration form by mail, write to: CLAS Standards meeting, c/o IQ Solutions, 11300 Rockville Pike, Suite 801, Rockville, MD 20852.

A reading room will be made available Monday through Friday from 9:00 a.m. B 5:00 p.m., at HHS Office of Minority Health, Rockwall II, 5515 Security Lane, #1000, Rockville, MD 20852. The reading room will contain all pertinent material related to the CLAS standards and regional meetings.

FOR FURTHER INFORMATION CONTACT: Guadalupe Pacheco, Office of Minority Health, 5515 Security Lane, Suite–1000, Rockville, MD 20852, Attn: CLAS, Office: (301) 443–5084, FAX: (301) 594–0767, EMAIL: gpacheco@osophs.dhhs.gov.

SUPPLEMENTARY INFORMATION:

Background

Cultural and linguistic competence suggests and ability by health care providers and health care organizations to understand and respond effectively to the cultural and linguistic needs brought by patients to the health care encounter. As health providers begin to treat a more diverse clientele as a result of demographic shifts and changes in participation in insurance programs, interest in designing culturally and linguistically appropriate services that lead to improved outcomes, efficiency and satisfaction is increasing. The provision of linguistically and culturally appropriate services is in the interest of providers, policymakers, accreditation and credentialing agencies, purchasers, patients, advocates, educators, and the general health care community.

Many health care providers do not have clear guidance on how to prepare for or respond to culturally sensitive situations. Until now, no comprehensive nationally recognized standards of cultural or linguistic competence in health care service delivery have been developed. Instead, Federal health agencies, state policymakers, and national organizations have independently developed their own standards and practices. Some have developed definitions of cultural competence while others mandate providing language services to limited English speakers. Some specify collection of language, race, and ethnicity data. Many approaches attempt to be comprehensive, while others target only a specific issue, geographic area, or subfield of health care, such as mental health. The result is a wide spectrum of ideas about what constitutes culturally competent health services, including significant differences with respect to target population, scope, and quality of services. Although limited in their jurisdiction, many excellent policies do exist, and the increasing numbers of model programs and practices prove that culturally competent health

services are viable, beneficial, and important to health care consumers.

In 1997, the U.S. Department of Health and Human Services' Office of Minority Health (OMH) asked Resources for Cross Cultural Health Care and the Center for the Advancement of Health to review and compare existing cultural and linguistic competence standards and measures in a national context, propose draft national standard language where appropriate, assess the information or research needed to relate these guidelines to outcomes, and develop an agenda for future work in this area. The result of this effort was a two-part report submitted to OMH in May, 1999 entitled Assuring Cultural Competence in Health Care: Recommendations for National Standards and an Outcomes-Focused Research Agenda.

The first part of this report recommends national standards for culturally and linguistically appropriate services (CLAS) in health care. Based on an analytical review of key laws, regulations, contracts, and standards currently in use by Federal and State agencies and other national organizations, these recommended standards were developed with input from a national project advisory committee of policymakers, health care providers, and researchers. Each standard is accompanied by commentary that addresses the proposed guideline's relationship to existing laws and standards, and offers recommendations for implemented and oversight to providers, policymakers, and advocates.

Public Comment Period and Regional Informational Meetings

The Office of Minority Health has determined that the appropriate next step is for the draft CLAS Standards to undergo a national process of public comment that will result in a broader awareness of HHS interest in CLAS, significant input from stakeholder groups on the draft standards, and a final revision of the standards and accompanying commentary supported by the expertise of a national project advisory committee. The final revisions will be published in the **Federal Register** as recommended national standards for adoption or adaptation by stakeholder organizations and agencies.

The publication of the CLAS standards in the **Federal Register**, and publicizing the availability of the complete report with commentary on the Internet and through local, regional, and national organizations will facilitate reaching as wide an audience of stakeholders as possible. This period of dissemination and awareness-raising will include three regional meetings to gather and solicit detailed input from interested individuals and organizations that will complement and enhance the public comments received by HHS through written and electronic means.

The 14 recommended standards are published below and, along with Part One of the full report, are also available online at *www.omhrc.gov/clas.* Individuals and organizations desiring to comment on the standards are encouraged to read the full report and to send comments during the public comment period, which will run from January 1, 2000 to April 30, 2000. Individuals may use one of the following methods for submitting comments: by mail to: CLAS Standards, c/o HHS Office of Minority Health, Rockwall, II, 5515 Security Lane, #1000, Rockville, MD 20852, by email to: OMHRC__Standards@IQSolutions.com or through the Website comment form at *www.omhrc.gov/clas,* or by participating in one of the regional meetings. Individuals sending comments are requested to include the following information: name, position, organization, mail, and email addresses; and to identify specifically those portions of their comments that pertain to: the overall report, the wording or content of individual standards, or the commentary on individual standards contained in the full report (indicate the appropriate standard number for each comment).

Individuals will also have an opportunity to participate in one of three regional meetings on the CLAS standards. The purpose of these 1-day meetings is to present information on the standards development process and for participants to discuss and provide comments on the standards themselves or their implementation. Due to space constraints, participation will be limited to the first 150 individuals who register. Registration will be accepted starting on December 15, 1999.

The dates and locations of the meetings are as follows:

January 21, 2000 meeting to be held in San Francisco, CA;

March 10, 2000 meeting to be held in Baltimore, MD;

April 5, 2000 meeting to be held in Chicago, IL.

Complete information on the regional meetings, including draft and final agendas, will be available online at *www.omhrc.gov/clas.* Individuals may register for one of the regional meetings by using the online registration form at *www.omhrc.gov/clas* or by sending a registration request to: CLAS Standards meeting, c/o IQ Solutions, 11300 Rockville Pike, Suite 801, Rockville, MD 20852. Only preregistered individuals will be guaranteed access to the meeting; transportation, lodging and other costs are the responsibility of the participant.

Recommended Standards for Culturally and Linguistically Appropriate Health Care Services

Based on an analytical review of key laws, regulations, contracts, and standards currently in use by Federal and state agencies and other national organizations, these guidelines were developed with input from a national project advisory committee of policymakers, providers, and researchers. In the full report, available online at *www.omhrc.gov/clas,* each standard is accompanied by commentary that addresses its relationship to existing laws and standards, and offers recommendations for implementation and oversight to providers, policymakers, and advocates.

Preamble

Culture and language have considerable impact on how patients access and respond to health care services. To ensure equal access to quality health care by diverse populations, health care organizations, and providers should:

1. Promote and support the attitudes, behaviors, knowledge, and skills necessary for staff to work respectfully and effectively with patients and each other in a culturally diverse work environment.

2. Have a comprehensive management strategy to address culturally and linguistically appropriate services, including strategic goals, plans, policies, procedures, and designated staff responsible for implementation.

3. Utilize formal mechanisms for community and consumer involvement in the design and execution of service delivery, including planning, policy making, operations, evaluation, training, and, as appropriate, treatment planning.

4. Develop and implement a strategy to recruit, retain, and promote qualified, diverse and culturally competent administrative, clinical, and support staff that are trained and qualified to address the needs of the racial and ethnic communities being served.

5. Require and arrange for ongoing education and training for administrative, clinical, and support staff in culturally and linguistically competent service delivery.

6. Provide all clients with limited English proficiency access to bilingual staff or interpretation services.

7. Provide oral and written notices, including translated signage at key points of contact, to clients in their primary language informing them of their right to receive interpreter services free of charge.

8. Translate and make available signage and commonly used written patient educational material and other materials for members of the predominant language groups in service areas.

9. Ensure that interpreters and bilingual staff can demonstrate bilingual proficiency and receive traning that includes the skills and ethics of interpreting, and knowledge in both languages of the terms and concepts relevant to clinical or non-clinical encounters. Family or friends are not considered adequate substitutes because they usually lack these abilities.

10. Ensure that the client's primary spoken language and self-identified race/ethnicity are included in the health care organization's management information system as well as any patient records used by provider staff.

11. Use a variety of methods to collect and utilize accurate demographic, cultural, epidemiological and clinical outcome data for racial and ethnic groups in the service area, and become informed about the ethnic/cultural needs, resources, and assets of the surrounding community.

12. Undertake ongoing organizational self-assessments of cultural and linguistic competence, and integrate measures of access, satisfaction, quality, and outcomes for CLAS into other organizational internal audits and performance improvement programs.

13. Develop structures and procedures to address cross cultural ethnical and legal conflicts in health care delivery and complaints or grievances by patients and staff about unfair, culturally insensitive or discriminatory treatment, or difficulty in accessing services, or denial of services.

14. Prepare an annual progress report documenting the organization's progress with implementing CLAS standards, including information on programs, staffing, and resources.

The complete report, along with supporting material, is available online at www.OMHRC.gov/clas.

Dated: December 7, 1999.

Nathan Stinson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 99–32419 Filed 12–14–99; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Voluntary Partner Surveys To Implement Executive Order 12862 in the Health Resources and Services Administration—(OMB 0915–0213)—Extension

In response to Executive Order 12862, the Health Resources and Services Administration (HRSA) is proposing to conduct voluntary customer surveys of its ''partners'' to assess strengths and weaknesses in program services. A generic approval is being requested from OMB to conduct the partner surveys. HRSA partners are typically State or local governments, health care facilities, health care consortia, health care providers, and researchers.

Partner surveys to be conducted by HRSA might include, for example, mail or telephone surveys of grantees to determine satisfaction with a technical assistance contractor, or in-class evaluation forms completed by providers who receive training from HRSA grantees, to measure satisfaction with the training experience. Results of these surveys will be used to plan and redirect resources and efforts as needed to improve service. Focus groups may also be used to gain partner input into the design of mail and telephone surveys. Focus groups in-class evaluation forms, mail surveys, and telephone surveys are expected to be the preferred methodologies.

A generic approval will permit HRSA to conduct a limited number of partner surveys without a full-scale OMB review of each survey. If generic approval is granted, information on each individual partner survey will not be published in the **Federal Register**.

The estimated response burden is as follows:

Type of survey	Number of respondents	Responses per respondent	Hours per response	Total hour burden
In-class evaluations	40,000	1	.05	2,000
Mail/Telephone surveys	12,000	1	.25	3,000
Focus groups	50	1	1.5	75
Total	52,050	1	.10	5,075

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 9, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–32429 Filed 12–14–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and Services Administration (60 FR 56605 as amended November 6, 1995,as last amended at 64 FR 46694–6, dated August 26, 1999). This notice reflects the organizational and functional changes in the HIV/AIDS Bureau. Make the following changes:

1. Delete the functional statement for the Office of Communications (RV1) in its entirety.

2. Delete the functional statement for the Office of Program Support (RV2) in its entirety and replace with the following:

Office of Program Support (RV2)

Plans, directs, coordinates, and evaluates Bureau-wide administrative and management support activities. Specifically: (1) Serves as the Associate Administrator's principal source for management and administrative advice and assistance; (2) assists in the development and administration of policies and procedures which govern the review and final recommendation for funding to the Associate Administrator; (3) in cooperation with the Division of Financial Management, Office of Management and Program Support (OMPS), provides guidance to the Bureau on financial management activities; (4) in cooperation with the Office of Human Resources and Development, HRSA, coordinates personnel activities for the Bureau and advises the Associate Administrator on the allocation of the Bureau's personnel resources; (5) in cooperation with the Division of Grants and Procurement Management, OMPS, conducts all business management aspects of the review, negotiation, award, and administration of Bureau grants and cooperative agreements, and coordinates the Bureau's contracts operations; (6) develops and maintains a system that tracks grant funds by program, State and grantee and by purpose of grant award; (7) provides support to field staff as appropriate by program; (8) provides organization and management analysis for the Bureau, develops policies and procedures for internal Bureau requirements, and interprets and implements the Administration's management policies and procedures; (9) coordinates the Bureau's delegations of authority activities; (10) manages the Bureau's performance appraisal and employee performance management systems; (11) provides or arranges for the provision of support services such as supply management, space management, manual issuances, forms, records, reports, and supports civil rights compliance activities; and, (12) provides direction regarding technological developments in office management activities.

3. Delete the functional statement for the Office of Policy and Program Development (RV3) in its entirety and replace with the following:

Office of Policy and Program Development (RV3)

Serves as the Bureau's focal point for planning, legislation, and related coordination activities including the development and dissemination of program objectives, alternatives, policy statements and the formulation and interpretation of program related policies. Specifically: (1) Advises the Associate Administrator and Division Directors in the development of plans and legislative proposals to support Administration goals, and serves as the primary staff unit on special projects for the Associate Administrator; (2) coordinates with the Office of Planning, Evaluation, and Legislation (OPEL), HRSA, and other appropriate offices in the preparation of HIV/AIDS-related program and legislative proposals, including the preparation of testimony and related information to be presented to the Congress; (3) monitors and analyzes HIV/AIDS-related policy and legislative developments, both within and outside the Department, for their potential impact on HIV/AIDS activities, and advises the Associate Administrator on alternative courses of action for responding to such developments; (4) organizes, guides, and coordinates the Bureau's program planning and development activities, and prepares the Bureau's strategic planning agenda; (5) provides staff services and coordinates activities pertaining to legislative policy and position papers, including the development of legislative proposals and the analysis of existing and pending Federal and State legislation to assure the fullest possible consideration of programmatic requirements in meeting established departmental, and HRSA goals; (6) maintains liaison with the Agency, Department, and other agencies, and distributes legislative materials; (7) participates in the development and coordination of program policies and implementation plans, including the development, clearance, and dissemination of regulations, criteria, guidelines, and operating procedures; (8) serves as the point of contact for the Agency, developing and coordinating working relationships and conducts specific joint activities among programs to assure optimum interaction on related HIV/AIDS activities and to minimize duplication and overlap; (9) conducts special inquiries and studies with emphasis on coordinating, managing and/or undertaking special projects which cut across Office or Division lines and responsibilities; (10) coordinates Bureau and HRSA comments on HIV/AIDS-related reports, position papers, legislative proposals, and related issues; (11) coordinates responses to requests for information received from other OPDIVs of the Department and from outside the Department; (12) provides program policy interpretation and technical assistance to other governmental and private organizations and institutions; (13) develops and coordinates performance measures; and, (14) manages the Bureau's executive secretariat functions.

4. Establish the Office of Communications and Information Dissemination (RV8)

The Office of Communications and Information Dissemination plans, designs, executes and evaluates national and international communication and information dissemination programs which include the development of written and broadcast materials conveying complex information about HIV/AIDS, the maintenance of effective working relationships with high-level public and private-sector policy makers and development of recommendations to improve HIV/AIDS Bureau program effectiveness. Specifically: (1) Collects, compiles, and distributes various data and information on HIV/AIDS health care issues and programs related to the activities of the Bureau; (2) develops and provides information materials to HIV/AIDS health program planners,

providers, consumers and others to assist in decisionmaking and maintaining effective, efficient operations; (3) develops and produces in-house communications to help ensure the understanding of current AIDS issues and Bureau program activities; (4) maintains information about primary sources of data and information on the health industry, disease trends, and public and private programs; (5) fosters and maintains relationships with and provides a referral service to Federal agencies, State and local governmental units, private health and medical organizations, and other organizations with which the Bureau has mutual interests; (6) provides technical assistance to Bureau program managers and project officers in identifying data and information needs and developing information products; (7) provides technical assistance to Bureau program managers in information and communications product packaging, desktop publishing, and media relations; (8) produces reports, articles, briefings, speeches, exhibits and other multi-media communications on Bureau services and on programs directed at the Bureau service and provider populations; (9) develops and implements new and innovative communication strategies including utilization of automated methods and electronic media in carrying out its responsibilities including managing and maintaining content of the Bureau's electronic web site, and liaison with the HRSA webmaster for technical support and design; and participation, coordination, and content development in use of technologies such as satellite transmission and distance learning; (10) functions as media advisor to Bureau Associate Administrator and other senior program staff; (11) reviews federal, state, and local legislation, issues, programs and policies and their impact on health care organization financing and service delivery to special populations served by Bureau programs; (12) identifies issues and problems and conducts appropriate analyses and studies in order to develop technical assistance products, presentations, seminars, and communications directed at the information and service needs of the intended audience; and (13) serves as principal liaison on behalf of HAB in coordinating with HRSA's Office of Communications, and through appropriate channels with the Department, and other interested and affected parties with respect to the development and dissemination of information on current and emerging health care issues, trends and problems affecting the services, programs, and populations served by the HAB.

Delegations of Authority

All delegations and redelegations of authority which were in effect immediately prior to the effective date hereof have been continued in effect in them or their successors pending further redelegation.

This reorganization is effective upon date of signature.

Dated: December 2, 1999.

Claude Earl Fox,

Administrator.

[FR Doc. 99–32244 Filed 12–14–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and Services Administration (60 FR 56605 as amended November 6, 1995, as last amended at 64 FR 46694–6, dated August 26, 1999). This notice reflects the organizational and functional changes in the Midwest Field Cluster.

Section RF–10—Organization

The Midwest Field Cluster is headed up by the Field Director who reports directly to the Associate Administrator, Office of Field Operations. The Midwest Field Cluster is organized as follows:

A. Immediate Office of the Field Director
B. Office of Data and Analysis
C. Northern Operations Division
D. Eastern Operations Division
E. Western Operations Division

Midwest Field Cluster (RF3)

Immediate Office of the Field Director (RF33)

Serves as HRSA's senior public health official in the Midwest region, providing liaison with State and local health officials as well as professional organizations; (2) provides input from local, regional and state perspectives to assist the HRSA Administrator and the Associate Administrators in the formulation, development, analysis and evaluation of HRSA programs and initiatives; (3) at the direction of the Administrator and/or in conjunction with the HRSA Associate Administrators and the Associate Administrator, Office of Field Operations, coordinates the field implementation of special initiatives which involve multiple HRSA programs and/or field offices (*e.g.,* Border Health); (4) assists with the implementation of HRSA programs in the field by supporting the coordination of activities, alerting program officials of potential issues and assessing policies and service delivery systems; (5) represents the Administrator in working with other Federal agencies, state and local health departments, schools of public health, primary care associations and organizations, community health centers, and others in coordinating health programs and activities; and (6) exercises line management authority as delegated from the Administrator for general administrative and management functions within the field structure.

Division of Data and Analysis (RF34)

Provides technical assistance, consultation and training to Field Cluster staff and Agency grantees related to data systems, planning and evaluation; (2) serves as focal point for States and Agency grantees on data and data systems issues related to HRSA program requirements; (3) develops statistical profiles of HRSA grantees in the region, and analysis of Geographic Information Systems profiles and other profiles developed by federal, state and local agencies in the region; (4) develops State profiles; (5) conducts and disseminates, as appropriate, trend analysis of financial data, health indicators, and service data to identify emerging trends among HRSA grantees and health service catchment areas in the Midwest; (6) provides consultation and support to private nonprofit organizations involved in health care delivery around special studies, research and evaluation related to health disparities; (7) analyzes program related reports; and (8) maintains Field Cluster program related database.

Northern Operations Division (RF35)

Directs and coordinates field development and implementation of HRSA programs and activities in three states within the Midwest Field Cluster designed to increase access, capacity and capabilities of local and state health systems and programs serving the underserved populations in the states served by the Division, including primary care programs, maternal and child health, HIV/AIDS, health facilities construction under the Hill-Burton Program, Title XVI, and other programs, rural health, and other health related

programs; (2) provides continuous program monitoring of HRSA health service grants and contracts for compliance with applicable laws, regulations, policies; and performance standards; (3) assists in the implementation of, and monitors policies related to National Health Service Corps scholarship and loan repayment programs; (4) provides for development, implementation and monitoring of the annual field work plan related to assigned program areas, including setting objectives responsive to national and field priorities based on guidance provided by appropriate HRSA bureau components and assigns division resources required to attain these objectives; (5) coordinates with other field office staff and headquarters staff to develop and consolidate objectives crossing program and division lines; (6) serves as source of expertise on health resources and services development, primary health care, maternal and child health, rural health, and HIV/AIDS, and other HRSA programs; (7) establishes effective communication and working relationships with health-related organizations of States and other jurisdictions; and (8) serves as a focal point for information on health resource programs and related efforts, including voluntary, professional, academic and other private sector activities. The States within the Northern Operations Division include Minnesota, Wisconsin and Illinois.

Eastern Operations Division (RF36)

Directs and coordinates field development and implementation of HRSA programs and activities in three states within the Midwest Field Cluster designed to increase access, capacity and capabilities of local and state health systems and programs serving the underserved populations in the states served by the Division, including primary care programs, maternal and child health,

HIV/AIDS, health facilities construction under the Hill-Burton Program, Title XVI, and other programs, rural health, and other health related programs; (2) provides continuous program monitoring of HRSA health service grants and contracts for compliance with applicable laws, regulations, policies, and performance standards; (3) assists in the implementation of, and monitors policies related to National Health Service Corps scholarship and loan repayment programs; (4) provides for development, implementation and monitoring of the annual field work plan related to assigned program areas, including setting objectives responsive to national and field priorities based on guidance provided by appropriate HRSA bureau components and assigns division resources required to attained these objectives; (5) coordinates with other field office staff and headquarters staff to develop and consolidate objectives crossing program and division lines; (6) serves as source of expertise on health resources and services development, primary health care, maternal and child health, rural health, and HIV/AIDS, and other HRSA programs; (7) establishes effective communication and working relationships with health-related organizations of States and other jurisdictions; and (8) serves as a focal point for information on health resource programs and related efforts, including voluntary, professional, academic and other private sector activities. The States within the Eastern Operations Division include Ohio, Michigan and Indiana.

Western Operations Division (RF37)

Directs and coordinates field development and implementation of HRSA programs and activities in four states within the Midwest Field Cluster designed to increase access, capacity, and capabilities of local and state health systems and programs serving the underserved populations in the states served by the Division, including primary care programs, maternal and child health, HIV/AIDS, health facilities construction under the Hill-Burton Program, Title XVI, and other programs, rural health, and other health related programs; (2) provides continuous program monitoring of HRSA health service grants and contracts for compliance with applicable laws, regulations policies and performance standards; (3) assists in the implementation or/and monitors policies related to National Health Service Corps scholarship and loan repayment programs; (4) provides for development, implementation, and monitoring of the annual field work plan related to assigned program areas, including setting objectives responsive to national and field priorities based on guidance provided by appropriate HRSA bureau components and assigns division resources required to attain these objectives; (5) coordinates with other field staff and headquarters staff to develop and consolidate objectives crossing program and division lines; (6) serves as source of expertise on health resources and services development, primary health care, maternal and child health, rural health, and HIV/AIDS, and other HRSA programs; (7) establishes effective communication and working relationships with health-related organizations of States and other jurisdictions; and (8) serves as a focal point for information on health resource programs and related efforts, including voluntary, professional, academic and other private sector activities. The States within the Western Operations Division include Iowa, Kansas, Missouri and Nebraska.

Dated: November 9, 1999.

Claude Earl Fox, M.D., M.P.H.,

Administrators.

[FR Doc. 99–32245 Filed 12–14–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: State Treatment and Needs Assessment Program Studies—New

Beginning in Fiscal Year 1999, SAMHSA's Center for Substance Abuse Treatment (CSAT), as part of its State Treatment Needs Assessment Program (STNAP), awards grants to States to conduct studies for the purpose of determining the need and demand for substance abuse treatment within each State. In order to receive funds from the

Substance Abuse Prevention and Treatment Block Grant, States must submit in their annual block grant applications an assessment of service needs Statewide, at the sub-state level, and for specified population groups (as required by Section 1929 of the Public Health Service Act).

Most States receiving these grants will conduct an adult telephone household survey to collect information on needed treatment for substance abuse/dependence. In addition, many States will conduct a variety of more focused studies which will collect data on treatment need in special populations, including adolescents, Temporary Assistance for Needy Families (TANF) recipients, transients, arrestees and other criminal justice populations. States are required to use core protocols comprised of basic study design, data collection methods, and a core set of questions for these data collections. Previous STNAP activities under contract awards were approved under OMB Control Number 0930–0186.

The estimated annualized burden for the State needs assessment studies over the next three years is presented below.

	No. of respondents	No. of responses/ respondent	Hours/ response	Total burden hours	Annual burden hours
Sub-State Prevalence Surveys	47,537	1	0.55	26,145	8,715
Criminal justice populations	63,240	1	0.22	13,913	4,638
Total	110,777			40,058	13,353

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 8, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–32455 Filed 12–14–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications; Notice of Receipt of Applications

SUMMARY: The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(a) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit No. TE–19805

Applicant: Angela M.D. Barclay, Tucson, Arizona.

Applicant requests authorization for scientific research and recovery purposes to conduct presence/absence surveys for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) in Arizona.

Permit No. TE–800052

Applicant: Southern Nevada Environmental Inc., Las Vegas, Nevada.

Applicant requests authorization for scientific research and recovery purposes to conduct presence/absence surveys for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) in various counties in Arizona.

Permit No. TE–819451

Applicant: Travis County Transportation & Natural Resources, Austin, Texas.

Applicant requests authorization for scientific research and recovery purposes to conduct presence/absence surveys for the following karst invertebrates in Texas:

Tooth Cave spider (*Neoleptoneta myopica*)
Bee Creek Cave harvestman (*Texella reddelli*)
Bone Cave harvestman (*Texella reyesi*)
Tooth Cave ground beetle (*Rhadine persephone*)
Kretschmarr Cave mold beetle (*Texamaurops reddelli*)
Tooth Cave pseudoscorpion (*Tartarocreagris texana*)

Permit No. TE–819451

Applicant: Janine Spencer, Prescott, Arizona.

Applicant requests authorization for scientific research and recovery purposes to conduct presence/absence surveys for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*), southwestern willow flycatcher (*Empidonax traillii extimus*), and Yuma clapper rail (*Rallus longirostris yumanensis*) in Arizona.

DATES: Written comments on these permit applications must be received on or before January 14, 2000.

ADDRESSES: Written data or comments should be submitted to the Legal Instruments Examiner, Division of Endangered Species/Permits, Ecological Services, PO Box 1306, Albuquerque, New Mexico 87103. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: The U.S. Fish and Wildlife Service, Ecological Services, Division of Endangered Species/Permits, PO Box 1306, Albuquerque, New Mexico 87103. Please refer to the respective permit number for each application when requesting copies of documents. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice, to the address above.

Susan MacMullin,

Acting Programmatic Assistant Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.

[FR Doc. 99–32513 Filed 12–14–99; 8:45 am]

BILLING CODE 4510–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for Incidental Take Permit for Houston Toad During Construction of a Single Family Residence on 0.5 Acre of the 6.517-acre Lot 7 in the Overlook Subdivision in Bastrop County, Texas

SUMMARY: Tamera Smith (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–020079–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction of a single family residence on Lot 7 of the

Overlook Subdivision, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before January 14, 2000.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Tannika Engelhard, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, Ecological Services Field Office, Austin, Texas at the above address. Please refer to permit number TE–020079–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Tannika Engelhard at the above Austin Ecological Services Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

APPLICANT: Tamera Smith plans to construct a single family residence on 6.517 acres platted as Lot 7 in the Overlook Subdivision, Bastrop County, Texas. This action will eliminate less than one acre of habitat. The applicant proposes to mitigate for this incidental take of the Houston toad by donating $1,500 into the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Alternatives to this action were rejected because not developing the subject property with federally listed species present was not economically feasible and alteration of the project design would not alter the level of impacts.

Thomas L. Bauer,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 99–32456 Filed 12–14–99; 8:45 am]

BILLING CODE 4510–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for Incidental Take Permit for Houston Toad (Bufo houstonensis) During Construction of a Single Family Residence on 5.068 Acres on Lot 13 in the Circle D Country Estates Subdivision in Bastrop County, Texas

SUMMARY: Shelby Gregory (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–020080–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction of a single family residence on Lot 3 of the Circle D Country Estates Subdivision, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before January 14, 2000.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Scott Rowin, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, Ecological Services Field Office, Austin, Texas at the above address. Please refer to permit number TE–020080–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Scott Rowin at the above Austin Ecological Services Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant

Shelby Gregory plans to construct a single family residence on 5.068 acres platted as Lot 13 in the Circle D Country Estates Subdivision, Bastrop County, Texas. This action will eliminate less than one acre of habitat. The applicant proposes to mitigate for this incidental take of the Houston toad by donating $1,500 into the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Alternatives to this action were rejected because not developing the subject property with federally listed species present was not economically feasible and alteration of the project design would not alter the level of impacts.

Thomas L. Bauer,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 99–32457 Filed 12–14–99; 8:45 am]

BILLING CODE 4510–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for Incidental Take Permit During Construction of a Single Family Residence on 0.75 acres of the 3.88-Acres on Lot 14, Westcliff Subdivision, 8004 Two Coves Drive, Austin, Texas

SUMMARY: David Anderson (Applicant) has applied for the U.S. Fish and Wildlife Service (Service) for an

incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–019709–0. The request permit, which is for a period of 5 years, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroic chrysoparia*). The proposed take would occur as a result of the construction of a single family residence on Lot 14. Two Coves Road, Austin, Travis County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before January 14, 2000.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contracting Scott Rowin, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor. Ecological Services Field Office, Austin, Texas at the above address. Please refer to permit number TE–019709–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Scott Rowin at the above Austin Ecological Services Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the act prohibits the ''taking'' of endangered species such as the gold-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant: David Anderson plans to construct a single family residence on Lot 14, 8004 Two Coves Drive, Austin, Travis County, Texas. This action will eliminate less than one acre of habitat and indirectly impact less than four additional acres of golden-cheeked warbler habitat. The applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by donating $1,500 into the Balcones Canyonlands Preserve to acquire/manage lands for the conservation of the golden-cheeked warbler.

Alternatives to this action were rejected because not developing the subject property with federally listed species present was not economically feasible, and alteration of the project design would not decrease the impacts.

Thomas L. Bauer,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 99–32458 Filed 12–14–99; 8:45 am]

BILLING CODE 4510–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–0768–1430–DH]

Notice of Intent To Prepare Land Use Plan Amendments for Land Tenure Adjustment and New Designations of Areas of Critical Environmental Concern (ACECs) Within the Upper Snake River District (USRD), Shoshone Field Office in Southern Idaho

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of Intent, Amendment of the existing Sun Valley, Bennett Hills/Timmerman Hills and Magic Management Framework Plans (MFPs) and the Monument Resource Management Plan (RMP) for (a) land ownership adjustments and (b) designation of new Areas of Critical Environmental Concern (ACECs).

SUMMARY: Pursuant to 43 CFR 1600, the USRD, Shoshone Field Office proposes to amend the Field Office's existing MFPs and RMP to identify public lands retention and transfer zones within the USRD, Shoshone Field Office area. Also pursuant to 43 CFR 1610, new areas having potential for ACEC designation and protective management shall be identified and considered. The Shoshone Field Office manages approximately 1.8 million acres of public land, located primarily in Blaine, Camas, Gooding, Jerome, Lincoln Counties, with a small portion in Elmore and Minidoka Counties.

DATES: Written comments on the BLM's intention to prepare these proposed land use plan amendments will be accepted until January 31, 2000. An informal public scoping meeting to identify planning issues and alternatives will be held from 4 p.m. to 8 p.m. on January 12, 2000, at the fire conference room at the Shoshone Field Office warehouse, 400 West F Street, Shoshone, Idaho. Additional meetings will be considered as appropriate.

ADDRESS, LOCATION AND AVAILABILITY OF DOCUMENTS RELATED TO THE PROPOSED AMENDMENTS: All documents related to the proposed amendments are located at the USRD, Shoshone Field Office, 400 West F Street, Shoshone, Idaho. The hours of availability are 9 a.m. to 3 p.m., Monday through Friday, except holidays. Comments, including names and addresses of respondents, will be available for public review at the above street address and times and may be published as part of the environmental assessment (EA) or other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety. Comments should be sent to Bill Baker, Shoshone Field Office Manager, Bureau of Land Management, P.O. Box 2–B, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the proposed land use plan amendments may be obtained from Debbie Kovar, Realty Specialist, at P.O. Box 2–B, Shoshone, Idaho 83352, or by calling (208) 886–2206.

SUPPLEMENTARY INFORMATION: The amendments will include proposals to identify changes in public lands retention or transfer status and designate new ACECs. Appropriate alternatives to the proposed amendments will be identified and analyzed in a draft amendment document and accompanying environmental assessment. These documents will be made available for public comment.

At a minimum, expertise related to the following topics will be utilized during the planning process: lands, wildlife habitat, rangeland management, minerals, cultural resources, trust responsibilities, treaty rights, watershed/soils, threatened/endangered and sensitive species and hazardous materials. As issues are identified, appropriate additional expertise will be

added to the planning team. Staff members representing these resources will be involved in the planning process.

The BLM anticipates that at least the following issues would be considered during preparation of the proposed amendments:

1. Which public lands should be retained in public ownership, and identified for ''retention only'' (i.e., not available for disposal)?

2. Should land tenure actions be taken to improve manageability of public lands in areas having high public value? If so, where are these lands located (i.e., which lands are considered to be of ''high value'' and also in need of land tenure adjustments to consolidate ownership or otherwise improve BLM's ability to manage resources on the lands)? Is there a need to consolidate ownership of scattered parcels of public land by exchanging for private or State lands? If so, which areas are most important, which public lands could be disposed of by exchange, and which non-federal lands should the BLM seek to acquire?

3. Which lands, if any, should be identified for disposal by sale, exchange, or under other authorities, to address concerns such as trespass, community expansion, enhanced manageability of State and Federal lands, pending expiration of land use permits, etc.?

4. If public lands are proposed for exchange, should there be some kind of priority process utilized in considering the resource values gained and lost? For example, should the exchange lands provide better federal land management, and better meet the needs of the State of Idaho and local people? Should it be considered whether the lands needed are for the economy, community expansion, recreation areas, food, wood fiber production, minerals, and fish and wildlife habitat, or other important values and uses?

5. In addition to presently designated Areas of Critical Environmental Concern (ACECs), which public lands, if any, should be considered for designation as ACECs?

Dated: November 30, 1999.

James E. May,

District Manager.

[FR Doc. 99–32252 Filed 12–14–99; 8:45 am]

BILLING CODE 4310–66–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–670–1220]

Recreation Management

AGENCY: Bureau of Land Management, DOI.

ACTION: Development of a Recreation Management Plan to guide the activities in the Imperial Sand Dunes Recreation Area through the next decade. The current plan was written in 1987 and is in need of revision. The recent listing of Threatened and Endangered Species, use patterns, and demographics for the Imperial Sand Dunes have changed in the past 13 years bringing new issues and concerns to be addressed.

SUMMARY: This notice affects public lands under the administrative responsibility of the Bureau of Land Management, El Centro Field Office and is know as the Imperial Sand Dunes Recreation Area. The boundary is delineated by in the following townships and ranges.

T12S, R16E,
T17S, R19E,
T16S, R21E

The most highly visited portion of the dune system is traversed to the north by Highway 78 and the south by Interstate 8. The west boundary follows the abandoned Old Coachella Canal, while the east boundary follows the Union Pacific Railroad. The exact planning area location is available at the El Centro BLM office.

Public Scoping meetings have been established to allow comments and public participation at the following dates and locations:

January 10, 2000 6:30 p.m.–9:00 p.m	Yuma, AZ	Yuma Civic and Convention Center, 1440 W Desert Hills Drive, Yuma, AZ.
January 12, 2000 6:30 p.m.–9:00 p.m	Long Beach, CA	Long Beach Gas Co. 2400 East Spring Street, Long Beach, CA.
January 14, 2000 6:30 p.m.–9:00 p.m	Cahuilla	Cahuilla Ranger Station, Gecko Road, Imperial Sand Dunes.
January 25, 2000 6:30 p.m.–9:00 p.m	Phoenix, AZ	Phoenix Public Library, Music Room—4th Floor, Phoenix, AZ.
January 27, 2000 6:30 p.m.–9:00 p.m	San Diego, CA	San Diego County Admin Center, 1600 Pacific Highway, San Diego, CA.

DATES: The planning process and comment period will be effective December 15, 1999. Interested parties may submit comments to the Field Manager, El Centro Field Office, 1661 South 4th Street, El Centro, CA 92243 until February 29, 2000.

FOR FURTHER INFORMATION CONTACT: Roxie Trost, Outdoor Recreation Planner, at 1661 South 4th Street, El Centro, CA 92243 or telephone (760) 337–4436.

Dated: December 9, 1999.

Elayne Briggs,

Acting Field Manager.

[FR Doc. 99–32459 Filed 12–14–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Alaska Outer Continental Shelf (OCS) Region Offshore Advisory Committee; Notice and Agenda for Meeting

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of meeting.

SUMMARY: The Alaska OCS Region Offshore Advisory Committee of the Minerals Management Service will meet on Thursday, January 6, 2000 from 9 a.m. to 4:30 p.m.

The agenda will cover the following principal subjects:

—The area identification for Proposed OCS oil and gas lease Sale 176, Beaufort Sea.

The meeting is open to the public. Upon request, interested parties may make oral presentations or submit written materials to the Alaska OCS Region Offshore Advisory Committee. Such requests should be made no later than December 30, 1999. Requests to make oral statements should be accompanied by a summary of the statement to be made. All oral presentations and written statements submitted before the conclusion of the meeting will be made part of the meeting record and will be made available to the Committee for its

discussions. For more information, call Michele Hope at (907) 271–6424.

Transcripts of the Alaska OCS Region Offshore Advisory Committee meeting will be available for public inspection and copying at the MMS in Anchorage, Alaska.

DATES: January 6, 2000.

ADDRESSES: The meeting will be held at the VECO Alaska Building, 949 East 36th Ave., Minerals Management Service, 3rd Floor Conference Room, Anchorage, Alaska 99508. Requests for oral presentations to be made on January 6, 2000 can be made to the same address or by phone, Attention: Michele Hope at (907) 271–6424.

FOR FURTHER INFORMATION CONTACT: Michele Hope at the address and phone number listed above.

Authority: Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A–63, Revised.

Dated: December 9, 1999.

John Goll,

Regional Director, Alaska OCS Region.

[FR Doc. 99–32460 Filed 12–14–99; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF INTERIOR

National Park Service

Notice of Availability of Environmental Assessment and Plan of Operations for Oil and Gas Exploration Within Big Cypress National Preserve, Florida

SUMMARY: The Preserve has received a Plan of Operations (Plan) for the exploration for nonfederal oil and gas from Collier Resource Company. The Plan was submitted pursuant to Title 36 of the Code of Federal Regulations, Part 9, Subpart B (36 CFR 9B). The National Park Service has prepared an Environmental Assessment (EA) in accordance with the National Environmental Policy Act to evaluate the proposed activity.

DATES: The Plan and EA are available for public review at Preserve Headquarters in Ochopee, Florida. Copies of the EA can be requested at the address below. Written comments should be submitted on or before January 14, 2000.

ADDRESSES: Superintendent, Big Cypress National Preserve, HCR 61, Box 110, Ochopee, Florida 34141, Telephone: (941) 695–2000, extension 325.

SUPPLEMENTARY INFORMATION: This notice is in accordance with 36 CFR 9.52. The Plan calls for the construction of approximately 8 miles of road, a drilling pad, drilling an exploratory well and conducting a 41-square miles three-dimensional geophysical survey.

In 1992, the National Park Service finalized a Minerals Management Plan (MMP) for the Preserve. The MMP along with other appropriate laws and regulations provide the framework for assessing proposals from non-federal oil and gas right owners. The MMP was evaluated as part of the Preserve's General Management Plan/ Environmental Impact Statement.

The EA of Collier Resources Company's Plan of Operations evaluates three alternatives: (1) Denial of Plan of Operations, (2) Approval of the Plan as Submitted, and (3) Approval of the Plan with Stipulations.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: December 7, 1999.

Daniel W. Brown,

Regional Director, Acting Director, Southeast Region.

[FR Doc. 99–32449 Filed 12–14–99; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–E (Review)]

Cotton Shop Towels From Peru

AGENCY: International Trade Commission.

ACTION: Termination of five-year review.

SUMMARY: On November 30, 1999, the Department of Commerce published notice in the **Federal Register** of its negative final determination of the likelihood of continuation or recurrence of a countervailable subsidy in connection with the subject five-year review. Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the five-year review of the suspended countervailing duty investigation concerning cotton shop towels from Peru (investigation No. 701–TA–E (Review)) is terminated.

EFFECTIVE DATE: November 30, 1999.

FOR FURTHER INFORMATION CONTACT: Gail Burns (202–205–2501), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Authority: This five-year review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

Issued: December 8, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–32496 Filed 12–14–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–413]

Certain Rare-Earth Magnets and Magnetic Materials and Articles Containing Same; Notice of Issuance of General Exclusion Order and Cease and Desist Orders; Termination of the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that, having found violations of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, the Commission issued a general exclusion order and cease and desist orders directed to three domestic respondents, and terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Cynthia Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3098. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the

Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On September 4, 1998, the Commission instituted an investigation based on a complaint filed by Magnequench International, Inc. (Magnequench) and Sumitomo Special Metals Co., Ltd. (SSMC). 63 FR 47319. The complaint alleged violations of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain rare-earth magnets or magnetic materials, or articles containing the same, that infringe claims 1, 4, 5, 8, 9, or 11 of U.S. Letters Patent 4,851,058, (the '058 patent); claims 1–6, 10, 14–16, or 18–20 of U.S. Letters Patent 4,802,931 (the '931 patent); claims 13–18 of U.S. Letters Patent 4,496,395 (the '395 patent); claims 1–9, 12–20, 23–27, or 29–34 of U.S. Letters Patent 4,770,723 (the '723 patent); claims 1–6, 8–10, 13–19, 21–24, 27–35, or 37–39 of U.S. Letters Patent 4,792,368 (the '368 patent); or claims 1–3, 5, 15, 18, 19, 21, or 22 of U.S. Patent Letters 5,645,651 (the '651 patent).

On September 22, 1999, the Commission determined not to review an initial determination (ID) granting complainants motion to withdraw from the investigation claims 1, 12, 23, 29, 30, and 32 of the '723 patent and claims 1, 13, 14, 22, 27, 32, 33, 34, and 39 of the '368 patent. Hence the claims in issue of the '723 patent and '368 patent are claims 2–9, 13–20, 24–27, 31, 33, and 34 of the '723 patent and claims 2–6, 8–10, 15–19, 21, 23, 24, 28–31, 35, 37, and 38 of the '368 patent.

The following respondents were named in the notice of investigation: Houghes International, Inc. (Houghes) of New York; International Magna Products, Inc. (IMI) of Indiana; Multi-Trend International Corp. a/k/a MTI-Modern Technology Inc. (Multi-Trend) of California; American Union Group, Inc. (AUG) of Maryland; High End Metals Corp. (High End) of Taiwan; Harvard Industrial America Inc. (Harvard) of California; H.T.I.E., Inc. (H.T.I.E.) of Pennsylvania; and CYNNY Magnets (CYNNY) of New Jersey.

On January 11, 1999, the Commission determined not to review an ID granting complainants' motion to amend the complaint and notice of investigation to add A.R.E., Inc. (A.R.E.) of Pennsylvania; NEOCO, L.C. (NEOCO) of Michigan; Beijing Jing Ma Permanent Magnets Materials Factory (Jing Ma) of China; and Xin Huan Technology Development Co., Ltd. (Xin Huan) of China as respondents.

On February 1, 1999, the Commission determined not to review an ID terminating the investigation as to respondent IMI on the basis of a consent order. On February 9, 1999, the Commission determined not to review IDs terminating the investigation as to respondents AUG, CYNNY, H.T.I.E., and Houghes on the basis of consent orders.

On May 25, 1999, the Commission determined not to review an ID granting complainants' motion for partial summary determination on the importation issue. On May 28, 1999, the Commission determined not to review an ID granting complainants' motion for summary determination on the domestic industry issue.

On August 6, 1999, the Commission determined not to review an ID finding respondents A.R.E., Jing Ma, and Xin Huan in default. On September 27, 1999, the Commission determined not to review an ID finding respondent Multi-Trend in default.

The prehearing conference and evidentiary hearing were conducted on June 9 to 18, 1999. Complainants, respondent NEOCO, and the Commission investigative attorneys (IAs) participated at the hearing. Following the filing of post-hearing submissions, closing arguments were heard on July 27, 1999.

On September 7, 1999, the ALJ issued his final ID finding a violation of section 337. His determination is based on his findings that the patents in issue are valid and enforceable, and that the accused imported magnets infringed all of the asserted claims, with the exception of claims 13–20, 25–27 and 33 of the '723 patent and claims 15–19, 21, 23, 24, 28, 30, 31, and 35 of the '368 patent. On October 25, 1999, the Commission determined not to review the ID, thereby finding a violation of section 337.

The remaining issues for the Commission to decide were (1) the appropriate remedy for the aforesaid violations, (2) whether the statutory public interest factors precluded such relief, and (3) the amount of the bond during the Presidential review period under 337(j). In making those determinations, the Commission took into account the presiding ALJ's recommended determination (RD) on permanent relief and bonding under 19 CFR 210.42(a)(2), as well as any written submissions from parties, the public, and other Federal agencies. The Commission solicited but did not receive submissions from other agencies or members of the public. The Commission received written submissions from complainants and the IAs that addressed the form of remedy, if any, that should be ordered, the effect of a remedy on the public interest, and the amount of bond that should be imposed during the 60-day Presidential review period. Complainants also filed a motion to file a sur-reply to the IAs' reply submission. That motion is hereby denied.

After considering the RD and the parties' submissions, the Commission determined that a general exclusion order is the appropriate remedy for the violations found in the subject investigation. The Commission also determined to issue three cease and desist orders directed to domestic respondents Multi-Trend, Harvard, and A.R.E.

The Commission also determined that the public interest factors enumerated in subsections (d) and (f) of section 337 do not preclude the issuance of the aforementioned general exclusion order and cease and desist orders, and that the bond during the Presidential review period shall be in the amount of 100 percent of the entered value of the articles in question.

This action is taken under the authority of section 337 of the Tariff Act of 1930, (19 U.S.C. § 1337), the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, and sections 210.45–210.51 of the Commission's rules of practice and procedure, 19 CFR 210.45–210.51.

Nonconfidential versions of Commission's Order and its Opinion on Remedy, the Public Interest, and Bonding, and all other nonconfidential documents filed in the investigation are or will be available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Commission's Office of the Secretary, Dockets Branch, 500 E Street, SW, Room 112, Washington, DC 20436, telephone 202–205–1802.

Issued: December 9, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–32497 Filed 12–14–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Energy Fuels Coal, Inc.

[Docket No. M–1999–106–C]

Energy Fuels Coal, Inc., P.O. Box 459, 11190 County Road 92, Florence, Colorado 91226 has filed a petition to modify the application of 30 CFR 75.901 (protection of low- and medium-voltage three-phase circuits used underground) to its South Field Mine (I.D. No. 05–03455) located in Fremont County, Colorado. The petitioner proposes to use a diesel generator to move equipment from section to section, and use a roof bolter to rehabilitate remote areas of the mine. The petitioner states that the genset is 480 vac three-phase, mounted and grounded to a metal sled with an area of 60 square feet that is in contact with damp mine floor at all times. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

2. Wabash Mine Holding Company

[Docket No. M–1999–107–C]

Wabash Mine Holding Company, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (nonpermissible diesel-powered equipment; design and performance requirements) to its Wabash Mine (I.D. No. 11–00877) located in Wabash County, Illinois. The petitioner proposes to: (i) equip diesel graders with devices that will limit the speed of the graders to 10 miles per hour; and (ii) train all miners who operate the graders in the proper technique for lowering the blade in order to restrict the speed and stop the grader. The petitioner asserts that application of the standard will result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

3. Energy West Mining Company

[Docket No. M–1999–108–C]

Energy West Mining Company, P.O. Box 310, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (nonpermissible diesel-powered equipment; design and performance requirements) to its Deer Creek Mine (I.D. No. 42–00121) located in Emery County, Utah, and Trail Mountain Mine (I.D. No. 42–01211) located in Carbon County, Utah. The petitioner proposes to: (i) install a speedometer on diesel graders in order to limit the speed to 25 miles per hour when operating graders in an underground coal mine or on the surface of an underground coal mine; and (ii) train all miners who operate the graders in the proper techniques for lowering the blade in order to restrict the speed and stop the grader, proper gear selection for grading, and proper speed for grading. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

4. Blue Mountain Energy, Inc.

[Docket No. M–1999–109–C]

Blue Mountain Energy, Inc., 3607 County Road, #65, Rangely, Colorado 81648 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (nonpermissible diesel-powered equipment; design and performance requirements) to its Deserado Mine (I.D. No. 05–03505) located in Rio Blanco County, Colorado. The petitioner proposes to: (i) equip diesel graders with service brakes only on the four rear wheels; (ii) install a device on the graders that will limit the speed to a maximum of 15 miles per hour; and (iii) train personnel on proper techniques for lowering the blade if additional slowing or stopping capability is needed, and on proper travel speeds consistent with road conditions. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

5. Black Beauty Coal Company

[Docket No. M–1999–110–C]

Black Beauty Coal Company, P.O. Box 176, Wheatland, Indiana 47597 has filed a petition to modify the application of 30 CFR 1909(b)(6) (nonpermissible diesel-powered equipment; design and performance requirements) to its Air Quality Mine (I.D. No. 12–02010) located in Knox County, Indiana. The petitioner proposes to: (i) limit the maximum speed of six-wheeled graders to less than 10 miles per hour; and (ii) train grader operators to lower the moldboard for additional stopping capability in emergency situations, and on how to recognize the appropriate speeds to use on different roadway conditions and slopes. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

6. Ohio County Coal Company

[Docket No. M–1999–111–C]

Ohio County Coal Company, 3740 North Main Street, Madisonville, Kentucky 42431 has filed a petition to modify the application of 30 CFR 75.1103 (automatic fire warning devices) to its Freedom Mine (I.D. No. 15–17587) located in Hopkins County, Kentucky. The petitioner proposes to use only one low-level carbon monoxide sensor where a belt drive discharges into a belt conveyor tailpiece as a continuation of a belt conveyor, or when the belt drive discharges at an angle onto the conveyor belt system the discharge roller is within 50 feet of the tailpiece, and the belt conveyor drive, belt take-up, and belt conveyor tailpiece are on the same split of air. The petitioner proposes to install a low-level carbon monoxide detection system as an early warning fire detection system in all belt entries where a monitoring system identifies a sensor location, instead of identifying each belt flight. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

7. Bledsoe Coal Corporation

[Docket No. M–1999–112–C]

Bledsoe Coal Corporation, Route 2008, Box 351A, Big Laurel, Kentucky has filed a petition to modify the application of 30 CFR 75.900 (low-medium-voltage circuits serving three-phase alternating current equipment; circuit breakers) to its Mine No. 4 (I.D. No. 15–11065), and Mine No. 60 (I.D. No. 15–12941) both located in Leslie County, Kentucky. The petitioner proposes to use contactors for protection on circuit breakers instead of using under-voltage protection and continue using short circuit protection by a circuit breaker for interrupting retrips. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

8. Mountain Coal Company

[Docket No. M–1999–113–C]

Mountain Coal Company, P.O. Box 591, 5174 Highway 133, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (nonpermissible diesel-powered equipment; design and performance requirements) to its West Elk Mine (I.D. No. 05–03672) located in Gunnison County, Colorado. The petitioner proposes to: (i) equip road graders with service brakes only on the four rear wheels in order to limit the speed to a maximum of 15 miles per hour; and (ii) train all personnel who operate the graders on the proper techniques for lowering the blade if additional slowing or stopping capability is needed. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

9. Snyder Coal Company

[Docket No. M–1999–114–C]

Snyder Coal Company, 66 Snyder Lane, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1200 (d) & (i) (mine map) to its Rattling Run Mine (I.D. No. 36–08713) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000-foot intervals of advance from the intake slope, and to limit the required mapping of the mine workings above and below to those present within 100 feet of the veins being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

10. Wabash Mine Holding Company

[Docket No. M–1999–115–C]

Wabash Mine Holding Company, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 75.364(b)(4) (weekly examination) to its Wabash Mine (I.D. No. 11–00877) located in Wabash County, Illinois. Due to deteriorating roof conditions, the petitioner asserts that to inspect the seals in the required manner will be unsafe, the petitioner proposes to establish a permanent monitoring station to monitor the air for oxygen and methane after it passes the seals and links the monitoring station to the mine-wide monitoring (DAN) system, and on a weekly basis evaluate the air that passes the seals. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

11. Jim Walter Resources, Inc.

[Docket No. M–1999–116–C]

Jim Walter Resources, Inc., P.O. Box 133, Brookwood, Alabama 53444 has filed a petition to modify the application of 30 CFR 75.901(a) (protection of low- and medium-voltage three-phase circuits used underground) to its No. 4 Mine (I.D. No. 01–01247), Mine No. 5 Mine (I.D. No. 01–01322), and Mine No. 7 (I.D. No. 01–01401) all located in Tuscaloosa County, Alabama. The petitioner proposes to use one 480-volt, three-phase, 260KW/325KVA diesel powered generator set to supply power to a 250 KVA three-phase transformer and three-phase power circuits utilizing the specific terms and conditions listed in this petition. The petitioner asserts that application of the mandatory standard will result in a diminution of safety. In addition, the petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

12. Energy West Mining Company

[Docket No. M–1999–117–C]

Energy West Mining Company, P.O. Box 310, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Trail Mountain Mine (I.D. No. 42–01211) located in Emery County, Utah. The petitioner requests that some of the requirements in the Decision and Order (D&O) for its previously granted petition, docket number M–98–019–C, be amended because the requirements have proven to be outdated due to changes in circumstances that originally supported the terms and conditions of the D&O. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the granted D&O and will not result in a diminution of safety provided by the existing standard.

13. Energy West Mining Company

[Docket No. M–1999–118–C]

Energy West Mining Company, P.O. Box 310, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.352 (return air courses) to its Trail Mountain Mine (I.D. No. 42–01211) located in Emery County, Utah. The petitioner requests that some of the requirements in the Decision and Order (D&O) for its previously granted petition, docket number M–98–020–C, be amended because the requirements have proven to be outdated due to changes in circumstances that originally supported the terms and conditions of the D&O. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the granted D&O and will not result in a diminution of safety provided by the existing standard.

14. Consolidation Coal Company

[Docket No. M–1999–119–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.312(c) (main mine fan examinations and records) to its Shoemaker Mine (I.D. No. 46–01436) located in Marshall County, West Virginia. The petitioner proposes to test automatic closing doors and automatic fan signal devices every 31 days without shutting down the fan and without removing miners from the mine. The petitioner has listed in this petition specific procedures for complying with the alternative method. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

15. Knox Creek Coal Corporation

[Docket No. M–1999–120–C]

Knox Creek Coal Corporation, P.O. Box 519, Raven, Virginia 24639 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Tiller No. 1 Mine (I.D. No. 44–06804) located in Buchanan County, Virginia. The petitioner proposes to use belt air to ventilate active working places. The petitioner proposes to install a low-level carbon monoxide detection system as an early warning fire detection system in all belt entries used as intake air courses. The petitioner asserts that application of the standard will result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to ''comments@msha.gov,'' or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 14, 2000. Copies of these petitions are available for inspection at that address.

Dated: December 6, 1999.

Carol J. Jones,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 99–32494 Filed 12–14–99; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0070(2000)]

Reports of Injuries to Employees Operating Mechanical Power Presses (29 CFR 1910.217(g)); Extension of the Office of Management and Budget's (OMB) Approval of an Information Collection (Paperwork) Request

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the proposed extension of the information collection requirement contained in the standard on Mechanical Power Presses (Reports of Injuries to Employees Operating Mechanical Power Presses), 29 CFR 1910.217(g).

REQUEST FOR COMMENT: The Agency seeks comments on the following issues:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated, electronic, mechanical, and other technological information and transmission collection techniques.

DATES: Submit written comments on or before February 14, 2000.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0070(2000), Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2222. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirement contained in the standard on Mechanical Power Presses (29 CFR 1910.217(g)) is available for inspection and copying in the Docket Office, or mailed on request by telephoning Theda Kenney at (202) 693–2222 or Barbara Bielaski at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at Http://www.osha.gov/comp-links.html, and click on ''Information Collection Requests''.

SUPPLEMENTARY INFORMATION

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is correct.

The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents. (29 U.S.C. 657.) In the event an employee is injured while operating a mechanical power press, 29 CFR 1910.217(g) requires the employer to provide information to OSHA regarding the accident within 30 days of the accident. This information includes the employer's and employee's names, workplace address, injury sustained, task being performed when the injury occurred, number of operators involved, cause of the accident, type of clutch and safeguard(s) used, and means used to actuate the press.

OSHA's Office of Electrical, Electronic, and Mechanical Engineering Safety Standards collects and reviews the accident information for the purpose of monitoring the effectiveness of the Mechanical Power Press Standard. The accident information also is forwarded to the National Institute for Occupational Safety and Health for analysis and compilation of an epidemiology data base on point-of-operation injuries. In addition, OSHA's Office of Compliance Programs is conducting a national emphasis program aimed at reducing the number and severity of power press injuries. It needs the accident information provided in these reports to evaluate the types of injuries that occur, and to identify the equipment and conditions associated with these injuries.

In summary, as production evolves and new technologies arise (or old ones decline), it is necessary to have up-to-date accident information. This information is useful in revising the standard, planning enforcement strategies, and training compliance officers, as well as for developing hazard alerts that address exceptionally hazardous equipment or operations.

II. Proposed Actions

OSHA proposes to decrease its earlier estimate of 57 burden hours to 41 burden hours for this provision (29 CFR 1910.217(g)), which contains the information collection requirement in the standard on Mechanical Power Presses. OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirement contained in the above standard.

Type of Review: Extension of currently approved information collection requirement.

Agency: Occupational Safety and Health Administration.

Title: Reports of Injuries to Employees Operating Mechanical Power Presses (29 CFR 1910.217(g)).

OMB Number: 1218–0700.

Affected Public: Business or other for-profit, not-for-profit institutions; Federal government; state, local or tribal government.

Number of Respondents: 123.

Frequency: On occasion.

Average Time per Response: 20 minutes (0.33 hour).

Estimated Total Burden Hours: 41.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 6–96 (62 FR 111).

Signed at Washington, DC, this 9th day of December 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–32501 Filed 12–14–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed class exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed class exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act or ERISA), the Federal Employees' Retirement System Act (FERSA), and from certain taxes imposed by the Internal Revenue Code of 1986 (the Code). If granted, the proposed exemption would permit cross-trades of securities among Index and Model-Driven Funds (Funds) managed by investment managers and among such Funds and certain large accounts to which such investment managers act as a ''trading adviser'' in connection with a specific portfolio restructuring program. The proposed exemption, if granted, would affect participants and beneficiaries of employee benefit plans whose assets are invested in Index or Model-Driven Funds, large pension plans involved in portfolio restructuring programs, as well as the Funds and the investment managers.

DATES: Written comments and requests for a public hearing must be received by the Department on or before February 14, 2000.

ADDRESSES: All written comments and requests for a public hearing (preferably 3 copies) should be sent to: Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, 200 Constitution Avenue N.W., Washington, DC 20210, (Attention: ''Class Exemption for Securities Cross-Traded by Index/Model-Driven Funds''). All comments received from interested persons will be available for public inspection in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue N.W., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. Louis J. Campagna, or Mr. E. F. Williams, of the Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210 at (202) 219–8883 or 219–8194, respectively, or Mr. Michael Schloss, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, at (202) 219–4600, ext. 105. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This document contains a notice of pendency before the Department of a proposed class exemption from the restrictions of sections 406(a)(1)(A) and 406(b)(2) of the Act, section 8477(c)(2)(B) of FERSA, [1] and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) of the Code. The Department is proposing the class exemption on its own motion pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990).[2]

I. Paperwork Reduction Act Analysis

The Department, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95), 44 U.S.C. 3506(c)(2)(A). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Pension and Welfare Benefits Administration (PWBA) is soliciting comments concerning the proposed information collection request (ICR) included in the Proposed Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds. A copy of the ICR may be obtained by contacting the PWBA official identified below in this Notice of Proposed Class Exemption.

The Department has submitted a copy of the proposed information collection to the Office of Management and Budget (OMB) for its review in accordance with 44 U.S.C. 3507(d) of PRA 95. The Department and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of the responses.

Dates: Written comments concerning the proposed collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington DC 20503; Attention: Desk Officer for the Pension and Welfare Benefits Administration. Although comments may be submitted through February 14, 2000, OMB requests the comments be received within 30 days of the publication of the Notice of Proposed Class Exemption to ensure their consideration.

Requests for copies of the ICR may be addressed to: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, D.C. 20210. Telephone: (202) 219–4782 (this is not a toll-free number); Fax: (202) 219–4745.

Title: Notice of Proposed Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds.

Type of Review: New.

AGENCY: Department of Labor, Pension and Welfare Benefits Administration.

Affected Entities: Business or other for-profit.

SUMMARY: The proposed class exemption would permit cross-trades by Funds in which plans invest and among

[1] The Department has responsibility for the administration and enforcement of section 8477 of FERSA. Section 8477 establishes the standards of fiduciary responsibility and requirements relating to the activities of fiduciaries with respect to the Federal Thrift Savings Fund. All references herein to the fiduciary responsibility provisions of Part 4 of Title I of ERISA also apply to the corresponding provisions of FERSA. Accordingly, any relief that would be provided under this proposed class exemption, if granted, would also apply to cross-trades of securities by the Federal Thrift Savings Fund.

[2] Section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996) generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

In the discussion of the exemption, references to specific provisions of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

such Funds and Large Accounts pursuant to portfolio restructuring programs which, in absence of the exemption, would be prohibited by ERISA. The information collection requirements incorporated within the proposed class exemption are designed as appropriate safeguards to ensure, among other things, prior approval by a plan of its participation in a cross-trading program, proper disclosures of information about a cross-trading program to plan investors, fair pricing procedures for securities cross-traded between the Funds or between such Funds and other Large Accounts managed by the investment manager, and the absence of a significant degree of investment discretion by the investment manager in the selection of particular securities for the Funds.

Needs and Uses: In order for the Department to grant an exemption for a transaction that would otherwise be impermissible under ERISA, the statute requires that the Department make a finding that the proposed exemption meets the statutory requirements of section 408(a). Section 408(a) requires a finding that the exemption is administratively feasible, in the interest of the plan and its participants and beneficiaries, and protective of the rights of the participants and beneficiaries. In order to ensure that this exemption meets the statutory requirements, the Department finds it necessary that certain information be provided to an independent fiduciary of each plan that invests in an Index or Model-Driven Fund, and that the independent fiduciary approve the plan's participation in a cross-trading program.

Respondents and Total Responses: The Department estimates that approximately 10 entities will seek to take advantage of the class exemption in a given year. The respondents will be banks and other investment managers acting as fiduciaries of plans investing in Index and Model-Driven Funds managed by such entities. There are expected to be 61,800 responses per year or 6,180 responses per entity per year.

Estimated Annual Burdens: The Department staff estimates the annual burden for preparing the materials required under the proposed class exemption to be a total of 68,150 hours or 6,815 hours per entity. The total annual burden cost (operating/maintenance) is estimated to be $116,184 or $11,618 per entity.

Comments submitted in response to this Notice of Proposed Class Exemption will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

II. Background

On March 20, 1998, a Notice was published in the **Federal Register** [63 FR 13696] to announce that the Department has under consideration certain applications for exemptions relating to cross-trades of securities by investment managers with respect to any account, portfolio or fund holding ''plan assets''[3] subject to the fiduciary responsibility provisions of Part 4 of Title I of ERISA. The Department published the Notice to request information which would assist it in determining what standards and safeguards are appropriate for future exemptions for cross-trades of securities.

The Department understands that securities cross-trading is a common practice among investment managers and advisers as a means for executing securities transactions for client accounts that are not subject to the fiduciary responsibility provisions of ERISA.[4] Such cross-trades could be either direct cross-trades or brokered cross-trades.

Direct cross-trades occur whenever an investment manager causes the purchase and sale of a particular security to be made directly between two or more accounts under its management without a broker acting as intermediary. Under this practice, the manager executes a securities transaction between its managed accounts without going into the ''open market''—such as a national securities exchange (*e.g.* the New York Stock Exchange—''NYSE'') or an automated broker-dealer quotation system (*e.g.* the National Association of Securities Dealers Automated Quotation National Market System—''NASDAQ'').

Brokered cross-trades occur whenever an investment manager places simultaneous purchase and sale orders for the same security with an independent broker-dealer under an arrangement whereby such broker-dealer's normal commission costs are reduced. In such instances, brokers are often willing to accept a lower commission because the transaction will be easier to execute where there are shares already available to complete the order for both the buyer and the seller.

In the Notice published on March 20, 1998, the Department noted that cross-trading transactions could result in violations of one or more provisions of Part 4 of Title I of ERISA. For example, section 406(b)(2) provides that an ERISA fiduciary may not act in any transaction involving a plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries. Where an investment manager has investment discretion with respect to both sides of a cross-trade of securities and at least one side is an employee benefit plan account, the Department has previously taken the position that a violation of section 406(b)(2) of ERISA would occur.[5] The Department has taken the position that by representing the buyer on one side and the seller on the other in a cross-trade, a fiduciary acts on behalf of parties that have adverse interests to each other.[6] Moreover, the prohibitions embodied in section 406(b)(2) of ERISA are per se in nature. Merely representing both sides of a transaction presents an adversity of interests that violates section 406(b)(2) even absent fiduciary misconduct reflecting harm to a plan's beneficiaries.[7]

In addition, violations of section 406(b)(1) or (b)(3) of ERISA may occur when an investment manager has discretion for both sides of a cross-trade. Section 406(b)(1) of ERISA prohibits a plan fiduciary from dealing with the assets of the plan in his own interest or for his own account. Section 406(b)(3) prohibits a plan fiduciary from receiving any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan.

It should also be noted that violations of section 403 and 404 could arise where the investment manager represents both sides in a cross-trade.

[3] See 29 CFR Part 2510.3–101, Definition of ''plan assets''—plan investments.

[4] The Department is expressing no opinion herein as to whether such cross-trade practices are in compliance with the relevant federal securities laws regulating securities transactions and/or the provision of investment advisory or management services by an investment manager. For example, cross-trading of securities between mutual funds and other accounts that use the same or affiliated investment advisers is permitted if the transactions are accomplished in accordance with SEC Rule 17a–7, an exemption from the prohibited transaction provisions of section 17(a) of the Investment Company Act of 1940 (see 17 CFR 270.17a–7). For a discussion of the issues relating to the use of SEC Rule 17a-7 for ERISA plan accounts, see the Notice published on March 20, 1998 (63 FR 13696, 13698–13700).

[5] *Reich* v. *Strong Capital Management Inc.,* No. 96–C–0669, USDC E.D. Wis. (June 6, 1996).

[6] See *Strong Capital Management Inc.,* supra.

[7] See, *Cutaiar* v. *Marshall,* 590 F.2d 523 (3d Cir. 1979). In *Cutaiar,* the court held that, ''[W]hen identical trustees of two employee benefit plans whose participants and beneficiaries are not identical effect a loan between the plans without a section 408 exemption, a per se violation of ERISA exists.'' *Cutaiar,* 590 F.2d at 529.

Section 404(a)(1)(A) of ERISA requires, in part, that a plan fiduciary must discharge its duties solely in the interests of the participants and beneficiaries of that plan and ''for the exclusive purpose'' of providing benefits to participants and beneficiaries and defraying reasonable plan expenses. Similarly, section 403(c)(1) of ERISA requires, in part, that the assets of a plan must be ''[H]eld for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan.''

In the Department's view, conflicts of interest in cross-trading occur because a manager is exercising investment and trading discretion over both sides to the same transaction and making decisions as to: which securities to buy or sell; how much of each security to buy or sell; when to execute a sale or purchase of each security; where to conduct a trade (*i.e.,* on a market or through a cross-trade); and at what price to conduct a trade.

In the Notice published on March 20, 1998, the Department discussed the types of individual exemptions previously granted for cross-trades of securities.[8] As noted therein, these past exemptions fall generally into two categories: (1) Those for Index and Model-Driven Funds; and (2) those for actively-managed or discretionary asset management arrangements.[9]

The trading decisions made for the Index and Model-Driven Funds involved are ''passive'' or ''process-driven.'' In the case of an Index Fund, the investment manager has been hired to invest money according to a formula that, for example, tracks the rate of return, risk profile, and other characteristics of an independently maintained index by either replicating the entire portfolio of the index or by investing in a representative sample of such portfolio designed to match the projected risk/return profile of that index. Model-Driven Funds are based upon formulae by which an ''optimal'' portfolio is created to implement some specific investment strategy that is either based upon or measured by an independently maintained index of securities. These ''process driven'' programs are implemented only by investment in an index replicating portfolio (in the case of index funds) or a set ''optimum'' portfolio (in the case of model-driven funds). In granting these exemptions, the Department did not believe, based on the representations made by the applicants requesting the prior exemptions, that the selection of individual securities for Index and Model-Driven Funds using such ''process-driven'' strategies would involve any significant exercise of investment discretion by the investment manager managing the Funds. In actively-managed programs, trading decisions are made by individuals hired to select particular securities as professional investment managers.

In the exemption applications, the applicants have represented to the Department that cross-trading provides certain benefits to employee benefit plans as Fund investors. For example, when one Fund needs to sell the same securities that another Fund needs to buy on the same day, a cross-trade saves both the selling Fund and the buying Fund the transaction costs (e.g., brokerage commissions or the bid-offer spread) that would otherwise have been paid to a broker-dealer for executing the transaction on the open market.

While recognizing the advantages of cross-trading to plans, the Department has particular concerns where managers have investment discretion over both sides of a cross-trade transaction. The conditions contained in the Department's prior individual exemptions for cross-trades by Index and Model-Driven Funds and actively-managed funds were intended to address these concerns and to safeguard plans against the inherent conflict of interest which exists when there is a common investment manager for both sides of a transaction. In this regard, the conditions incorporated into these exemptions were designed to protect plans against the potential that an investment manager may exercise discretion to favor one account over another; *e.g.,* in the pricing of a particular cross-trade, in the decision to either buy and/or sell particular securities for an ERISA account, or to allocate securities among accounts, including ERISA accounts.

The Department recognizes that its concerns are more apparent in situations involving actively-managed accounts or funds, where an investment manager has total investment discretion to choose particular securities for such accounts or funds at any time, subject only to general investment guidelines or objectives established by the client plan fiduciaries. As a result, the Department is not proposing relief for transactions involving actively-managed cross-trading at this time. Information obtained by the Department in response to the Notice with respect to cross-trades of securities by actively-managed funds is currently under consideration by the Department.[10] Publication of the proposed exemption does not foreclose future consideration of additional exemptive relief for actively-managed programs. However, the Department believes that it has developed a sufficient record, through consideration of past individual exemptions and comments to the Notice, to propose relief for passive and process-driven cross-trading, subject to certain restrictions and limitations regarding the exercise of fiduciary discretion.

With respect to this exemptive relief for cross-trades by Index and Model-Driven Funds, it should be noted that, through the development of past cross-trading exemptions and enforcement proceedings, the Department became aware of issues that have caused it to reexamine its exemption policy for such transactions. As a result, certain of the conditions and definitions contained in this proposal differ from a number of the conditions and definitions developed over time for the previously granted passive and process-driven individual exemptions. These proposed modifications reflect the importance to the Department of retaining flexibility to review its exemption policy in the context of changed circumstances or new facts brought to its attention.

For example, in the ''process-driven'' context, it was represented to the Department in past exemption applications that investment managers who manage accounts or pooled funds

[8] The individual exemptions generally have focused on direct cross-trading transactions. These exemptions have provided relief from the prohibitions of section 406(b)(2) of ERISA, but have not provided relief for any violations of section 406(b)(1) or (b)(3) of ERISA. It should also be noted that the Department does not have authority under section 408(a) of ERISA to exempt a plan fiduciary from any violations of sections 403 and 404 of ERISA. Thus, even when proceeding under an individual exemption, an investment manager remains fully liable under sections 403 and 404 of ERISA for the investment decisions relating to cross-trades.

[9] In this regard, see the following Prohibited Transaction Exemptions (PTEs): PTE 95–83, Mercury Asset Management (60 FR 47610, September 13, 1995); PTE 95–66, BlackRock Financial Management L.P., (60 FR 39012, July 31, 1995); PTE 95–56, Mellon Bank, N.A. (60 FR 35933, July 12, 1995); PTE 94–61, Batterymarch Financial Management (59 FR 42309, August 17, 1994); PTE 94–47, Bank of America National Trust and Savings Association (59 FR 32021, June 21, 1994); PTE 94–43, Fidelity Management Trust Company (59 FR 30041, June 10, 1994); PTE 94–36, The Northern Trust Company (59 FR 19249, April 22, 1994); PTE 92–11, Wells Fargo Bank, N.A. (57 FR 7801, March 4, 1992)—which replaced PTE 87–51 noted below; PTE 89–116, Capital Guardian Trust Company (54 FR 53397, December 28, 1989); PTE 89–9, State Street Bank and Trust Company (54 FR 8018, February 24, 1989); PTE 87–51, Wells Fargo Bank, N.A. (52 FR 22558, June 12, 1987); and PTE 82–133, Chase Manhattan Bank, N.A. (47 FR 35375, August 13, 1982).

[10] In this regard, the Department directs interested persons to a notice of public hearing which the Department is also publishing in today's **Federal Register**.

often attempt to track the rate of return, risk profile and other characteristics of an independently maintained third party index (*e.g.,* the Standard & Poors 500 Composite Stock Price Index a/k/a the S&P 500 Index, the Wilshire 5000 Index, the Russell 2000 Index). These pooled funds are usually collective investment funds established and trusteed by large banks that manage money for institutional investors, including employee benefit plans. Under the Department's past exemptions, such funds may cross-trade pursuant to certain narrowly-defined ''triggering events'' which involve little, if any, discretion on the part of the investment manager.

In the past, various applicants represented to the Department that the investment strategy of most Index Funds merely involved replicating the capitalization-weighted composition of a particular index. In this regard, FERSA itself requires that the Common Stock Index Investment Fund (an S&P 500 Fund) be invested in a portfolio that is ''* * * designed such that, to the extent practicable, the percentage of the Common Stock Index Investment Fund that is invested in each stock is the same as the percentage determined by dividing the aggregate market value of all shares of that stock by the aggregate market value of all shares of all stocks included in such index.'' 5 U.S.C. § 8438(b)(2)(B).[11] Consequently, in the past, the Department generally focused on issues relating to Index Funds which simply replicated the capitalization-weighted composition of a particular index.

However, the Department now understands that the process that Index Funds use to replicate the returns of an index may not be limited to replicating the exact composition of the index and that many, if not most, Index Funds do not totally replicate the exact composition of the index that is being tracked. In many instances, the manager maintains some discretion to select particular securities to track the rate of return, risk profile and other characteristics of the overall index without actually holding all of the securities included in the index. Some Index Funds are designed to exceed the rate of return and/or deviate from the risk profile of the index by altering the composition or weighting of securities within the index as designated by the organization that maintains the index. These ''enhanced'' Index Funds often have strategies that resemble actively-managed accounts. Therefore, the Department believes that the definition of an ''Index Fund'' that is permitted to cross-trade pursuant to certain narrowly-defined ''triggering events'' needs to be modified under the proposal from that contained in prior individual exemptions.

In addition, Model-Driven Funds are portfolios that apply specific investment philosophies and criteria in formulaic fashion to create a specialized portfolio. Model-Driven Funds may come in many different forms. Some Model-Driven Funds seek to transform the capitalization-weighted or other specified composition of an index in order to accomplish certain goals. Such goals may include client-initiated instructions to delete certain stocks from an index that is otherwise being tracked, or investment management styles which incorporate mathematical formulae designed to focus on certain investment criteria (*e.g.,* price-earnings ratios) at certain times in order to achieve a rate of return for the model-driven portfolio that exceeds that of the underlying index. Thus, some Model-Driven Funds appear to be a more sophisticated type of ''enhanced'' Index Fund.

The Department notes that the proposed exemption would not be available to a Fund if the manager has modified the index or design of the model to produce cross-trade opportunities. For example, the exemption would not be available to a Fund if the manager has modified the index or design of the model to generate buy or sell orders based on the availability of a security within the control of the manager. Such a modification or design would cause a Fund to engage in cross-trades solely for the purpose of providing matching trades suited to another Fund's needs rather than for the investment purposes of the Fund whose trading criteria have been modified.

The Department believes that the definition of a ''Model-Driven Fund'' that cross-trades pursuant to ''triggering events'' also needs to be modified from that contained in prior exemptions. Further, the Department is of the view that the definition of a ''triggering event'' should be modified to reduce the amount of discretion that an investment manager may exercise in connection with a cross-trading decision on behalf of a Model-Driven Fund.

III. Discussion of the Comments on the Notice

The Department received a total of twenty-nine (29) comment letters on the Notice, approximately half of which addressed cross-trades by Index and Model-Driven Funds. Some of these comments were from major industry groups, such as associations representing investment managers that act as fiduciaries for employee benefit plans.

Many of these comments responded directly to the specific questions posed by the Department in the Notice. These comments, as they relate to cross-trades by Index and Model-Driven Funds, are summarized below.

The comments almost universally endorsed the idea of the Department proposing additional exemptive relief for cross-trades of securities by Index and Model-Driven Funds. All of the comments noted that, under appropriate conditions, cross-trading can provide numerous benefits to client accounts and funds, including the avoidance of brokerage commissions and bid-offer spreads that would otherwise be incurred, and the avoidance of adverse market impact costs if such trades were transacted on the open market. In addition, many of the commenters noted that in international markets there are benefits from cross-trading associated with avoiding other related transaction costs, such as settlement charges, registration fees, and certain taxes. As noted above, the Department questions whether avoiding adverse market impact costs is favorable to the party that would have received a better price had the market price moved in its favor prior to engaging in the transaction. The Department invites comments regarding this concern.

A commenter stated that the advantages provided by cross-trading securities are magnified in the case of ''passively'' managed accounts or funds, primarily because of the relatively large account sizes and overlap in portfolio composition. For example, because Index and Model-Driven Funds must maintain certain weighting and parameters, cash inflows into one Fund essentially mandate the acquisition of an array of securities, while cash outflows in another Fund may require the simultaneous disposition of many of the same securities.

With respect to the size of the market attributable to assets of employee benefit plans that cross-trade, one comment from a large investment manager estimated that over $700 billion of pension and retirement funds are invested in ''passive'' strategies (*e.g.,* Index and Model-Driven Funds) which rely heavily on cross-trading to minimize transaction costs. Another comment from a major bank that manages Index and Model-Driven Funds

[11] In addition, section 8438 (b)(3)(B) and (b)(4)(B) of FERSA contain similar requirements for the Small Capitalization Stock Index Investment Fund and International Stock Index Investment Fund.

stated that the bank estimates that cross-trading saves its clients hundreds of millions of dollars each year by substantially reducing transaction costs. Other comments from major corporations with large pension plans that invest in Index and Model-Driven Funds also noted transaction cost savings of over $1,000,000 for each of their plans over a two-year period. Similar comments were made by other institutional investors, such as governmental plans.

The Department is concerned that the savings mentioned by the commenters may not only be reflective of transaction cost savings, but may also reflect ''savings'' attributable to the avoidance of market impact by cross-trading securities rather than engaging in open market transactions. The Department seeks further comments and data regarding the savings which may be expected from cross-trades and the basis for such savings.

Some commenters further asserted that clients demand cross-trading capabilities as a condition for the investment manager to handle their accounts. With ''passive'' investment management strategies that seek to replicate the rate of return, risk profile and other characteristics of a designated index (*e.g.,* the S&P 500 Index), the success of an investment manager is often measured by the tracking error of the managed portfolio vis-a-vis the index. Cross-trades of securities help reduce an investment manager's overall transaction costs, which are otherwise a major source of tracking error in relation to the index because the index is valued without taking into consideration transaction costs. Thus, it is virtually impossible for an investment manager to replicate the rate of return, risk profile and other characteristics of an index, or to accurately track the designated composition and weighting of the securities contained therein, when the organization maintaining such index establishes the value of the index exclusive of such transaction costs. In addition, the comments note that every dollar a portfolio spends on transaction costs (either as spreads or commissions) detracts from the investment strategy guideline that has been mandated by the independent plan fiduciary—*i.e.,* to come as close as possible to the rate of return, risk profile and other characteristics of the designated index.

Moreover, cross-trades of securities by Model-Driven Funds that are designed to exceed the rate of return of a designated index also achieve better results by reducing transaction costs. A commenter noted that the computer models, which create the portfolios for a Model-Driven Fund by transforming an index, dictate the securities to be purchased and sold in precise quantities. Thus, the commenter stated that the types of passive strategies used by these Funds do not work as effectively if an investment manager must make decisions with respect to purchases or sales of individual securities which override the selections made by the computer model.

In this regard, one commenter asserted that cross-trading enables an investment manager to obtain, or dispose of, the necessary amounts of such securities without having to alter a model's investment strategy because of transaction costs associated with achieving the desired goal. Other comments asserted that cross-trading is merely another method of executing the purchase or sale of a security that has already been included on the trade list of a Model-Driven Fund for a particular day. Thus, the decision to buy or sell a security through cross-trades, rather than on the open market, is made after the trade list for the purchase or sale of that security has been prepared. Such trade lists are developed by computer models which use prescribed objective factors and external data to automatically generate a model-prescribed portfolio, or use a client's instructions to buy or sell particular securities to facilitate a client-initiated portfolio restructuring.

Still other commenters noted that the computer models or optimization programs that drive a Model-Driven Fund are designed to keep the Fund's portfolio of securities balanced with the projected return, risk profile and other characteristics of the appropriate model or index. One major bank that manages such Funds commented that these models are not designed to increase the frequency of cross-trades, but rather to apply quantitative techniques to achieve a predetermined investment strategy. This comment stated that investment managers do not let the ''tail wag the dog'' by weighting or manipulating the investment models to produce more cross-trades.

With respect to the degree of investment discretion exercised by an investment manager in creating and operating a Model-Driven Fund, one comment asserted that, while the creation of a computer model may require human intervention, the operation of a Model-Driven Fund in accordance with the dictates of the model involves the same type of ''passive'' investment strategy and human intervention as an Index Fund. In addition, the comments state that these computer models are rarely changed and their operations are free of any overt or subtle discretion exercised by the investment manager. When such models are changed, clients are often provided with prior notice of the change and objective criteria are used to design the new ''passive'' investment strategy. The comments maintain that the mere ability to change the model, exercised infrequently, does not change a strategy from passive to active. In this regard, some of the comments state that an investment manager for an Index or Model-Driven Fund is not hired by its clients to subjectively analyze individual securities or a range of securities, and that the compensation paid to the investment manager for implementing a ''passive'' investment strategy is much less than that required for active management. Thus, these comments note that the level of compensation paid to a ''passive'' investment manager reflects the role that such manager has in operating a Model-Driven Fund.

In any event, all of the comments state that the benefits of cross-trading override any concerns the Department may have regarding the degree of discretion a particular investment manager may exercise in the design and implementation of a computer model used for a Model-Driven Fund. The comments assert that these concerns are further mitigated by the conditions of the Department's past exemptions which require, among other things, that: (1) cross-trades by the Funds can occur only in response to various ''triggering events'' which are not within the manager's control or discretion; (2) a large plan or other large account can only engage in cross-trades with an Index or Model-Driven Fund where the investment decisions relating to a particular portfolio restructuring program for the large plan/account are made by a fiduciary or other appropriate decision-maker who is independent of the investment manager; (3) all cross-trade transactions will occur within three business days of the ''triggering event'' necessitating the purchase or sale; (4) all cross-traded securities must be securities for which there is a generally recognized market; (5) the price for all securities involved in the cross-trade will be the current market value for the securities on the close of the trading day in which the transaction occurs; and (6) the investment manager may not receive additional compensation as a result of the cross-trade.

After consideration of the information contained in the comments relating to cross-trades of securities by Index and Model-Driven Funds and the current

cross-trade practices utilized by investment managers that manage such Funds, the Department has determined to propose this class exemption. As discussed in further detail below, this proposed class exemption for cross-trades of securities by Index and Model-Driven Funds contains many of the same conditions that appear in the individual exemptions previously granted by the Department, with certain modifications. In addition, the proposal contains a number of new conditions and definitions which attempt to address concerns that have been raised since those exemptions were granted.

IV. Description of the Proposed Exemption

A. Scope and General Rule

The proposed exemption consists of four parts. Section I sets forth the general exemption and describes the transactions covered by the exemption. Sections II and III contain specific and general conditions applicable to transactions described in section I. Section IV contains definitions for certain terms used in the proposed exemption.

The exemption set forth in section I would provide relief from the restrictions of sections 406(a)(1)(A) and 406(b)(2) of ERISA and section 8477(c)(2)(B) of FERSA for: (a) the purchase and sale of securities between an Index or Model-Driven Fund and another such Fund, at least one of which holds ''plan assets'' subject to the Act; and (b) the purchase and sale of securities between such Funds and certain large accounts (Large Accounts) pursuant to portfolio restructuring programs of the Large Accounts.

The proposed exemption under section I(a) applies to cross-trades of securities among Index or Model-Driven Funds managed by the same investment manager where both Funds contain plan assets. However, as stated above, a violation of section 406(b)(2) occurs when an investment manager has investment discretion with respect to both sides of a cross-trade of securities and at least one side is an entity which contains plan assets. As a result, the proposed exemption is also applicable to situations where the investment manager has investment discretion for both Funds involved in a cross-trade but one Fund does not contain plan assets because, for example, it is registered as an investment company under the Investment Company Act of 1940 (e.g., a mutual fund). Any mutual fund or other institutional investor covered by the proposed exemption under section I(a) must meet the definition of an Index Fund or a Model-Driven Fund, contained in section IV(a) and (b). Institutional investors which meet the definition contained in section IV(a) and (b) may include, but are not limited to, entities such as insurance company separate accounts or general accounts, governmental plans, university endowment funds, charitable foundation funds, trusts or other funds exempt from taxation under section 501(a) of the Code.

The proposed exemption under section I(b) would apply to the purchase and sale of securities between a Fund and a Large Account, at least one of which holds ''plan assets'' subject to ERISA or FERSA, pursuant to portfolio restructuring programs initiated on behalf of certain Large Accounts. The term ''Large Accounts'' is defined in section IV(e) as certain large employee benefit plans or other large institutional investors with at least $50 million in total assets, including certain insurance company separate and general accounts and registered investment companies. A portfolio restructuring program, as defined in section IV(f), involves the buying and selling of securities on behalf of a Large Account in order to produce a portfolio of securities which either becomes an Index Fund or a Model-Driven Fund or resembles such a Fund, or to carry out a liquidation of a specified portfolio of securities for a Large Account. The definition of a Large Account requires that an independent fiduciary authorize an investment manager (i.e., a Manager, as defined in section IV(i)) to restructure all or part of the portfolio or to act as a ''trading adviser'' as defined in section IV(g) with respect to the restructuring of such portfolio. The trading adviser's role is limited under the proposed exemption to the disposition within a stated period of time of a securities portfolio of a Large Account and the creation of the required portfolio. Under this definition, the manager may not have any discretionary authority for any asset allocation, security selection, restructuring or liquidation decisions or otherwise provide investment advice with respect to such transactions. It has been represented to the Department that, in such restructuring transactions, commissions and other costs are saved by not having to liquidate all of the securities contained in the Large Account's portfolio on the open market. In this regard, the Department notes that it expects the investment manager to comply with the applicable securities laws in connection with any portfolio restructuring program.

Section IV(a) and (b) require that the Index or Model-Driven Fund be based upon an index which represents the investment performance of a specific segment of the public market for equity or debt securities. Section IV(c) requires that the index be established and maintained by an independent organization which is: in the business of providing financial information or brokerage services to institutional clients; a publisher of financial news or information; or a public stock exchange or association of securities dealers. The index must be a standardized index of securities which is not specifically tailored for the use of the manager. The Department seeks comments directed to the proposed definition of an index.

Section IV(a) and (b) specifically define Index and Model-Driven Funds for purposes of the proposed exemption. These definitions are designed to limit the amount of discretion the manager can exercise to affect the identity or amount of securities to be purchased or sold and to assure that the purchase or sale of any security is not part of an arrangement, agreement or understanding designed to benefit the manager. Under the definition of ''Index Fund'' contained in section IV(a), the investment manager must track the rate of return of an independently maintained securities index by either replicating the same combination of securities which compose such index or by investing in a representative sample of such portfolio based on objective criteria and data designed to recreate the projected return, risk profile and other characteristics of the index. Under the definition of ''Model-Driven Fund'' contained in section IV(b), trading decisions are passive or process-driven since the identity and the amount of the securities contained in the Fund must be selected by a computer model. Although the manager can use its discretion to design the computer model, the model must be based on prescribed objective criteria using third party data, not within the control of the manager, to transform an independently maintained index. Thus, for example, no exemptive relief would be available if the manager designed the computer model to consider the liquidity or the availability of a security based on information that was solely within the control of the manager. In such instances, the computer model would be considering data that was not from a third party source, and that was within the control of the manager.

B. Price and Securities

Section II(a) requires that the cross-trade must be executed at the closing price for that security. ''Closing price'' is defined in section IV(h) as the price

for the security on the date of the transaction, as determined by objective procedures disclosed to Fund investors in advance and consistently applied with respect to securities traded in the same market. The procedures shall indicate the independent pricing source (and alternates, if the designated pricing source is unavailable) used to establish the closing price and the time frame after the close of the market in which the closing price will be determined. The pricing source must be independent of the manager and must be engaged in the ordinary course of business of providing financial news and pricing information to institutional investors and/or the general public, and must be widely recognized as an accurate and reliable source for such information. In this regard, some managers use one pricing service for pricing domestic securities and another pricing service for pricing foreign securities. With respect to foreign securities, the applicable independent pricing source should provide the price in local currency rates and, if that currency is other than U.S. dollars, also provide the U.S. dollar exchange rate. Thus, securities would be cross-traded in all cases at the closing prices received by the manager from the relevant independent pricing source.

The Department has adopted this definition in an effort to be consistent with the methods for determining the price of cross-traded securities currently utilized by Index and Model-Driven Fund investment managers, according to the comments to the Notice published on March 20, 1998. In addition, the Department believes that this pricing approach will ensure that the pricing procedures utilized are objective and not subject to the discretion or manipulation of any of the involved parties. The comments received indicated that passive managers generally utilize independent pricing services which collect information on closing prices of securities. However, the Department realizes that passive fund managers have an ever present need to retain the flexibility to consider advanced trading or pricing techniques which could reduce costs that generate tracking error or which reflect a more refined view of the market behavior of a specific security. Comments are invited as to whether the definition of the price for a cross-traded security contained in this proposal is responsive to that need.

Section II(f) requires that the cross-trades of either equity securities or fixed income securities involve only securities for which market quotations are readily available from independent sources that are engaged in the ordinary course of business of providing financial news and pricing information to institutional investors and/or the general public, and are widely recognized as accurate and reliable sources for such information. Section II(f)(1) further requires that cross-trades of equity securities only involve securities which are widely-held and actively-traded. In this regard, the Department notes that equity securities will be deemed to be ''widely-held'' and ''actively-traded'' under this proposed exemption if such securities are included in an independently maintained index, as defined in section IV(c) herein. The Department invites comments from interested persons regarding the definitions of the types of allowable securities permitted to be cross-traded under the exemption. The Department's intent is to exclude those securities which are thinly-traded. This intent is based upon the underlying notion that the cross-trading of a security may avoid the market impact on the price of the security that a similar trade on the market would produce. This avoidance of market impact through cross-trading would be more dramatic with thinly-traded securities. The Department expects that managers, in making their determinations regarding the types of securities included within the scope of this condition, would consider information about the average daily trading volume for U.S. equities traded on a nationally recognized securities exchange or NASDAQ which would be readily available from independent pricing sources or other independent sources which publish financial news and information.

The Department also invites comments from interested persons as to whether Index Funds and Model-Driven Funds may hold significant amounts of the outstanding shares of a particular security which is included in an index used by a manager to design and operate a portfolio for its Funds. In addition, the Department invites comments as to whether cross-trades of securities by a manager's Funds, which may represent a high percentage of the average daily trading volume for the securities on the open market, avoids the market impact that the same trades would have if executed on the open market.

C. Triggering Events

Section II(b) of the proposed exemption requires that any purchase or sale of securities by a Fund in a cross-trade with another Fund or with a Large Account occur as a direct result of a ''triggering event,'' as defined in section IV(d), and that such cross-trade be executed no later than the close of the second business day following such ''triggering event.'' The Department believes that trading pursuant to triggering events limits the discretion of the manager to affect the identity or amount of securities to be purchased or sold. Triggering events, as defined in section IV(d), are outside the control of the manager and will ''automatically'' cause the buy or sell decision to occur.

Triggering events are defined in section IV(d) as:

(1) a change in the composition or weighting of the index underlying the Fund by the independent organization creating and maintaining the index;

(2) A specific amount of net change in the overall level of assets in a Fund, as a result of investments in and withdrawals from the Fund, provided that: (A) Such specified amount has been disclosed in writing as a ''triggering event'' to an independent fiduciary of each plan having assets held in the Fund prior to, or within ten (10) days after, its inclusion as a ''triggering event'' for such Fund; and (B) investments or withdrawals as a result of the manager's discretion to invest or withdraw assets of an employee benefit plan maintained by the manager for its own employees (a Manager Plan), other than a Manager Plan which is a defined contribution plan under which participants direct the investment of their accounts among various investment options, including such Fund, will not be taken into account in determining the specified amount of net change;

(3) An accumulation in the Fund of a specified amount of either: (A) Cash which is attributable to interest or dividends on, and/or tender offers for, portfolio securities; or (B) stock attributable to dividends on portfolio securities; provided that such specified amount has been disclosed in writing as a ''triggering event'' to an independent fiduciary of each plan having assets held in the Fund prior to, or within ten (10) days after, its inclusion as a ''triggering event'' for such Fund; or

(4) A change in the composition of the portfolio of a Model-Driven Fund mandated solely by operation of the formulae contained in the computer model underlying the Fund where the basic factors for making such changes (and any fixed frequency for operating the formulae contained in the model) have been disclosed in writing to an independent fiduciary of each plan having assets held in the Fund prior to, or within ten (10) days after, its inclusion as a ''triggering event'' for such Fund.

The first three triggering events have largely been adopted based upon those triggering events utilized in prior individual exemptions, with an additional requirement in the second and third triggering events for the amounts involved to be specified and disclosed to independent fiduciaries of plans investing in the Funds. In addition, the last triggering event has been added to the proposal in order to clarify that a triggering event also occurs as a result of a change in the composition of a Fund's portfolio mandated solely by operation of the computer model underlying the Fund. For example, if a model contained a formula for a Fund requiring only stocks with a certain price/earnings ratio and some of the originally prescribed stocks now were above the specified tolerances of the formula relating to that model, a triggering event would occur requiring that those stocks be sold by the Fund. The Department has added this triggering event under this proposed exemption in order to clarify that certain Model-Driven Funds may need to buy or sell securities to conform to changes to the portfolio prescribed by the model that differ from changes to a portfolio necessitated as a result of changes to the underlying index. The proposed exemption does not require that a computer model be operated according to any fixed frequency, but, the Department is of the view that the proposed exemption would not be available unless the formulae contained in the computer model underlying a Fund are operated by the manager on an objective basis rather than being used for the purpose of creating cross-trade opportunities in response to the needs of other Funds or certain Large Accounts.

The Department further notes that under section II(l), disclosures must be made to independent plan fiduciaries regarding the triggering events that would create cross-trading opportunities for Funds under the manager's cross-trading program. Under the model-driven triggering event contained in the proposal, the basic factors for making changes in the composition of the portfolio of a Model-Driven Fund mandated solely by operation of the formulae contained in the computer model must be included in these disclosures.

Finally, the Department notes that if a computer model used to create a portfolio for a Model-Driven Fund is designed to exclude particular stocks for reasons specified by the plan client or the plan's investment guidelines, such exclusions would not be considered a separate triggering event.

D. Modifications to the Computer Model

Section II(c) requires that, if the model or the computer program used to generate the model underlying the Fund is changed by the manager, no cross-trades of any securities can be engaged in pursuant to the proposed exemption for ten (10) business days following the change. This restriction recognizes the authority of the manager to change assumptions involving computer models after the model's activation.

The Department notes that the proposed ten (10) business day ''blackout'' period for cross-trades by a Fund after any change made by the manager to the model underlying the Fund is intended to prevent model changes which might be made by managers, in part, to deliberately create additional cross-trading activity. The 10-day period is based on a condition contained in a prior individual exemption for cross-trading by Index and Model-Driven Funds (e.g., Section I(d) of PTE 95–56, regarding Mellon Bank, 60 FR 35933, July 12, 1995) as well as representations made by applicants in a number of exemption applications currently under consideration.[12]

However, the Department now understands that, in order to keep pace with the demands of investors in Model-Driven Funds, the industry changed many of its past practices which may now make a ''10-day blackout period'' for cross-trades problematic for certain Fund managers. For example, many Model-Driven Funds have more frequent opening dates for accepting new contributions from investors than in the past. In some cases, a Model-Driven Fund may be open for new contributions every day. In such instances, decisions regarding the implementation of a model change which would require the 10-day blackout period for cross-trades may place the manager in a situation of conflict between investors who wish to make contributions at different times.

Therefore, the Department specifically requests comments from interested persons as to whether the proposed 10-day blackout period for cross-trades would be an acceptable approach to address our concerns regarding model changes that may be timed to create additional cross-trading opportunities or whether there are other approaches which would be equally effective, but less burdensome, to the manager's operation of the Fund. The Department also requests specific comments as to how frequently changes to a model are made.

In addition, under section IV(b), a computer model for a Model-Driven Fund must use independent third party data, not within the control of the manager, to transform an index.

E. Allocation of Cross-Trade Opportunities

The Department notes that frequently the amount of a security which all of the Funds need to buy may be less than the amount of such security which all of the Funds will need to sell, or vice versa. Thus, section II(d) of the proposed exemption requires that all cross-trade opportunities be allocated by the manager among potential buyers, or sellers, on an objective basis. Under section II(d), this basis for allocation must have been previously disclosed to independent fiduciaries on behalf of each plan investor, and must not permit the exercise of any discretion by the manager. In previous individual exemptions, applicants have relied on different systems (e.g. pro rata or queue) to objectively allocate cross-trade opportunities. While it appears to the Department that a pro rata basis of allocation would be the method least subject to scrutiny, the Department recognizes the validity of other workable objective systems. However, the Department cautions that such systems may not permit the exercise of discretion by the manager.

F. Disclosures and Authorizations

Section II(i) of the proposed exemption requires that a plan's participation in a cross-trade program of a manager will be subject to the prior written authorization of a plan fiduciary who is independent of the manager. This authorization, once given, would apply to all Funds that comprise the manager's cross-trading program at the time of the authorization. Thus, a new authorization by an independent plan fiduciary for investment in a different Fund, in which the plan did not invest at the time of its initial written authorization, would not be necessary to the extent that such Funds were part of the program at the time of the original authorization. However, where a manager makes new Funds available for plan investors or changes triggering events relating to Funds subject to the initial authorization, and such Funds or triggering events were not previously disclosed as being part of the manager's cross-trading program, section II(l) of the proposal requires that in such instances the manager furnish

[12] These exemption applications are: D–9584, Wells Fargo Bank, N.A.; D–10107, Bankers Trust Company of New York; D–10188, Barclays Bank PLC and Affiliates; and D–10507, ANB Investment Management and Trust Company.

additional disclosures to an independent plan fiduciary. The Manager shall provide a notice to each relevant independent plan fiduciary prior to, or within ten (10) days following, such addition of Funds or change to, or addition of, triggering events, which contains a description of such Fund(s) or triggering event(s). Such notice will also include a statement that the plan has the right to terminate its participation in the cross-trading program and its investment in any Index Fund or Model-Driven Fund without penalty at any time, as soon as is necessary to effectuate the withdrawal in an orderly manner.

As noted below, section II(m) also requires that disclosures regarding any new Funds or triggering events be made as part of the notice required for a plan's annual re-authorization of its participation in the manager's cross-trading program, even though the plan receiving such notice has not invested in such new Funds.

Section II(j) clarifies the meaning of Section II(i) with respect to existing plan investors in any of the Funds prior to a manager's implementation of a cross-trading program. Under section II(j), the authorizing independent fiduciary must be furnished notice and an opportunity to object to that plan's participation in the program not less than forty-five (45) days prior to the implementation of the cross-trade program. Section II(j) further states that the failure of the authorizing fiduciary to return a special termination form provided in the notice within thirty (30) days of receipt shall be deemed to be approval of the plan's participation in the program. If the authorizing plan fiduciary objects to the plan's inclusion in the program, the plan will be given the opportunity to withdraw without penalty prior to the program's implementation.

Sections II(k) and II(l) describe the type of information that is required to be disclosed to a plan fiduciary prior to the authorization defined in sections II(i) and II(j). Important among these disclosures is a statement describing the conflicts that will exist as a result of the manager's cross-trading activities. This statement must also detail and explain how the manager's practices and procedures will mitigate such conflicts. Such writing must include a statement that:

Investment decisions will not be based in whole or in part by the manager on the availability of cross-trade opportunities. These investment decisions include:

- Which securities to buy or sell;
- How much of each security to buy or sell; and,
- When to execute a sale or purchase of each security.

Investment decisions will be made prior to the identification and determination of any cross-trade opportunities. In addition, all cross-trades by a Fund will be based solely upon triggering events set forth in the exemption. Records documenting each cross-trade transaction will be retained by the manager.

Section II(m) further requires that notice be provided to the authorizing plan fiduciary at least annually of the plan's right to terminate its participation in the cross-trading program and its investment in any of the Funds without penalty. Such notice must be accompanied by a special termination form. Failure to return the form (within at least thirty (30) days of the receipt) will be deemed approval of the plan's continued participation in the cross-trading program. Such annual re-authorization will contain disclosures regarding any new Funds that are added to the cross-trading program or any new ''triggering events'' (as defined in Section IV(d) below) that may have been added to existing Funds since the time of the initial authorization described in Section II(i), or the time of the notice described in Section II(j).

Section II(n) of the proposed exemption details specific requirements for cross-trades of securities which will occur in connection with a Large Account restructuring. In particular, section II(n)(2) requires that the authorization for such cross-trades must be made in writing prior to the cross-trade transactions by fiduciaries of the Large Account who are independent of the manager. Such authorization must follow full written disclosure of information regarding the cross-trading program. Such authorization may be terminated at will upon receipt by the manager of written notice of termination. A termination form must be supplied to the Large Account fiduciary concurrent with the written description of the cross-trading program. Under section II(n)(3), the portfolio restructuring program must be completed within thirty (30) days of the initial authorization made by the Large Account's fiduciary (or initial receipt of assets associated with the restructuring, if later), unless the Large Account's fiduciary agrees in writing to extend this period for another thirty (30) days. Large Account fiduciaries may utilize the termination form or any other written instrument at any time within this 30-day period to terminate their prior written authorization for cross-trading related to the portfolio restructuring program. Under section II(n)(4), within thirty (30) days of the completion of the restructuring program, the Large Account fiduciary must be fully apprised in writing of the results of the transactions. Such writing may include, upon request by the Large Account fiduciary, additional information sufficient to allow the independent fiduciary for the Large Account to verify the need for each cross-trade and the determination of the above decisions. However, the manager may refuse to disclose to a Large Account fiduciary or other person any such information which is deemed confidential or privileged if the manager is otherwise permitted by law to withhold such information from such person and, by the close of the thirtieth (30th) day following the request, the manager gives a written notice to such person advising that person both the reasons for the refusal and that the Department may request such information.

G. Recordkeeping

Section III(a) requires that the manager maintain records necessary to allow a determination of whether the conditions of the proposed exemption have been met. These records must be maintained for a period of six (6) years from the date of the transactions. These records must include records which identify the following:

(1) On a Fund by Fund basis, the specific triggering events which result in the creation of the model prescribed output or trade list of specific securities to be cross-traded;

(2) On a Fund by Fund basis, the model prescribed output or trade list which describes: (A) Which securities to buy or sell; (B) how much of each security to buy or sell in detail sufficient to allow an independent plan fiduciary to verify that each of the above decisions for the Fund was made in response to specific triggering events; and

(3) On a Fund by Fund basis, the actual trades executed by the Fund on a particular day and which of those trades were associated with triggering events.

As explained to the Department, the triggering event relating to net investments in, or withdrawals from, a Fund results in new cash to invest in the Fund or the need to liquidate securities from a Fund. The model or index underlying the Fund determines which securities to purchase or sell based on the amount of net investments or withdrawals. This process results in the creation of a trade list or a model prescribed output of securities to be

purchased or sold. The manager then applies its objective allocation system to the trade lists or model prescribed outputs used for other Funds participating in the cross-trade program to determine which particular cross-trades will occur between Funds. For those securities which cannot be cross-traded after application of the manager's allocation system, the necessary purchases and sales are made through other means.

In the view of the Department, records must be maintained of this cross-trading activity with enough specificity to allow an independent plan fiduciary to verify whether the safeguards of this exemption have been met. Section II(b) requires that any cross-trade of securities by a Fund occur as a direct result of a ''triggering event'' as defined in section IV(d) and is executed no later than the close of the second business day following such ''triggering event.'' Among the records needed to verify that this condition has been satisfied, section III(a)(1) requires that, on a Fund by Fund basis, the manager maintain a record of the specific triggering events which result in the creation of the list of specific securities for the manager's cross-trading system. Section III(a)(2) further requires that, on a Fund by Fund basis, the manager maintain records of the model prescribed output or trade list, as well as the procedures utilized by the manager to determine which securities to buy or sell and how much of each security to buy or sell, in detail sufficient to allow an independent plan fiduciary to verify that each of the above decisions for the Fund was made in response to specific triggering events. As provided by section III(b)(2), if such material is viewed as a trade secret, or privileged or confidential, the manager may refuse to disclose such information if reasons for the refusal are given and the person is also notified that the Department of Labor may request such information.

This recordkeeping requirement is intended to assure that independent plan fiduciaries will be able to determine whether Funds and their underlying models or indexes operate consistently in following the input of triggering event information. The Department does not intend to prescribe a detailed list of records that are necessary to enable a determination of compliance with the exemption because the necessary records will depend on the nature of the Index or Model-Driven Funds involved and other factors. This information, however, should be kept in sufficient detail to enable a replication of specific historical events in order to satisfy an inquiry by persons identified in section III(b)(1)(A). Section III(a)(3) requires that, on a Fund by Fund basis, records be maintained of the actual trades executed by the Fund on a particular day and which of those trades resulted from triggering events.

The Department recognizes that these requirements may require adjustments to a manager's record-keeping systems. Therefore, the Department seeks specific comments on these record-keeping requirements and any additional burdens that they may impose on Fund managers.

Further, Section III(a) requires that the records must be readily available to assure accessibility and maintained so that an independent fiduciary, or other persons identified in section III(b)(1)(A), may obtain them within a reasonable time. This requirement should permit the records to be retrieved and assembled quickly, regardless of the location in which they are maintained. For those records which are not maintained electronically, the records should be maintained in a central location to facilitate assembly and examination.

All records must be unconditionally available at their customary location for examination during normal business hours by the persons described in section III(b)(1). However, as noted with respect to information which may be disclosed to a Large Account fiduciary or other person, the manager may refuse to disclose to a person, other than a duly authorized employee or representative of the Department or the Internal Revenue Service, any such information which is deemed confidential or privileged if the manager is otherwise permitted by law to withhold such information from such person. In such instances, the manager shall provide, by the close of the thirtieth (30th) day following the request, a written notice to such person advising that person of the reasons for the refusal and that the Department may request such information.

H. Effect on Existing Exemptions

The proposed exemption is generally similar to a number of individual exemptions that previously have been granted by the Department for such transactions.[13] However, the operative language of the proposal differs from that of the individual exemptions in a number of respects. For example, the proposal under section II(h) prohibits the cross-trade of any securities issued by the manager, unless the manager has obtained a separate prohibited transaction exemption for the acquisition of such securities by its Index and Model-Driven Funds. A number of prior individual exemptions allow such transactions in order to eliminate potential tracking error of the Fund associated with replicating the rate of return, risk profile and other characteristics of the index containing the manager's securities. The Department invites comments as to the effect that the continuation of current Index and Model-Driven Fund individual exemptions would have in offering an advantage to those investment managers granted such relief compared to those managers which would utilize this exemption, if granted. Finally, the Department is aware that a number of individuals have expressed concern regarding whether the Department would revoke past individual exemptions involving Index and Model-Driven Fund cross-trading programs in connection with the granting of this class exemption. The Department notes that under the Prohibited Transaction Exemption Procedures, 29 CFR Section 2570.50(b), before revoking or modifying an exemption, the Department must publish a notice of its proposed action in the **Federal Register** and provide interested persons with an opportunity to comment on the proposed revocation or modification.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties with respect to the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the

[13] The following individual exemptions involve cross-trades of securities by Index and Model-Driven Funds: PTE 95–56, Mellon Bank, N.A. (60 FR 35933, July 12, 1995); PTE 94–47, Bank of America National Trust and Savings Association (59 FR 32021, June 21, 1994); PTE 94–43, Fidelity Management Trust Company (59 FR 30041, June 10, 1994); PTE 94–36, The Northern Trust Company (59 FR 19249, April 22, 1994); PTE 92–11, Wells Fargo Bank, N.A. (57 FR 7801, March 4, 1992)—which replaced PTE 87–51 noted below; PTE 89–9, State Street Bank and Trust Company (54 FR 8018, February 24, 1989); and PTE 87–51, Wells Fargo Bank, N.A. (52 FR 22558, June 12, 1987).

requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plans and their participants and beneficiaries and protective of the rights of participants and beneficiaries of such plans;

(3) If granted, the proposed exemption will be applicable to a transaction only if the conditions specified in the exemption are met; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a public hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the referenced application at the above address.

Proposed Exemption

The Department has under consideration the grant of the following class exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Exemption for Cross-Trading of Securities by Index and/or Model-Driven Funds

Effective [date of publication of final class exemption], the restrictions of sections 406(a)(1)(A) and 406(b)(2) of the Act, section 8477(c)(2)(B) of FERSA, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) of the Code, shall not apply to:

(a) The purchase and sale of securities between an Index Fund or a Model-Driven Fund (a ''Fund''), as defined in Sections IV(a) and (b) below, and another Fund, at least one of which holds ''plan assets'' subject to the Act or FERSA; or

(b) The purchase and sale of securities between a Fund and a Large Account, as defined in Section IV(e) below, at least one of which holds ''plan assets'' subject to the Act or FERSA, pursuant to a portfolio restructuring program, as defined in Section IV(f) below, of the Large Account;

provided that, with respect to all such purchases and sales (referred to herein as ''cross-trades''), the conditions set forth in Sections II and III below are met.

Section II—Specific Conditions

(a) The cross-trade is executed at the closing price, as defined in Section IV(h) below.

(b) Any cross-trade of securities by a Fund occurs as a direct result of a ''triggering event,'' as defined in Section IV(d) below, and is executed no later than the close of the second business day following such ''triggering event.''

(c) If the cross-trade involves a Model-Driven Fund, the cross-trade does not take place within ten (10) business days following any change made by the Manager to the model underlying the Fund.

(d) The Manager has allocated the opportunity for all Funds or Large Accounts to engage in the cross-trade on an objective basis which has been previously disclosed to the authorizing fiduciaries of plan investors, and which does not permit the exercise of discretion by the Manager (*e.g.,* a pro rata allocation system).

(e) No more than ten (10) percent of the assets of the Fund or Large Account at the time of the cross-trade are comprised of assets of employee benefit plans maintained by the Manager for its own employees (Manager Plans) for which the Manager exercises investment discretion.

(f)(1) Cross-trades of equity securities involve only securities that are widely-held, actively-traded, and for which market quotations are readily available from independent sources that are engaged in the ordinary course of business of providing financial news and pricing information to institutional investors and/or the general public, and are widely recognized as accurate and reliable sources for such information. For purposes of this requirement, the terms ''widely-held'' and ''actively-traded'' shall be deemed to include any security listed in an Index, as defined in Section IV(c) below; and

(2) Cross-trades of fixed-income securities involve only securities for which market quotations are readily available from independent sources that are engaged in the ordinary course of business of providing financial news and pricing information to institutional investors and/or the general public, and are widely recognized as accurate and reliable sources for such information.

(g) The Manager receives no brokerage fees or commissions as a result of the cross-trade.

(h) The cross-trade does not involve any security issued by the Manager unless the Manager has obtained a separate prohibited transaction exemption for the acquisition of such security.

(i) As of the date the proposed exemption is granted, a plan's participation in the Manager's cross-trading program as a result of investments made in any Index or Model-Driven Fund that holds plan assets is subject to a written authorization executed in advance of such investment by a fiduciary of the plan which is independent of the Manager engaging in the cross-trade transactions.

(j) With respect to existing plan investors in any Index or Model-Driven Fund as of the date the proposed exemption is granted, the independent fiduciary is furnished with a written notice, not less than forty-five (45) days prior to the implementation of the cross-trading program, that describes the Fund's participation in the Manager's cross-trading program, provided that:

(1) Such notice allows each plan an opportunity to object to the plan's participation in the cross-trading program as a Fund investor by providing the plan with a special termination form;

(2) The notice instructs the independent plan fiduciary that failure to return the termination form to the Manager by a specified date (which shall be at least 30 days following the plan's receipt of the form) shall be deemed to be an approval by the plan of its participation in the Manager's cross-trading program as a Fund investor; and

(3) If the independent plan fiduciary objects to the plan's participation in the cross-trading program as a Fund investor by returning the termination form to the Manager by the specified date, the plan is given the opportunity to withdraw from each Index or Model-Driven Fund without penalty prior to the implementation of the cross-trading program, within such time as may be reasonably necessary to effectuate the withdrawal in an orderly manner.

(k) Prior to obtaining the authorization described in Section II(i), and in the notice described in Section II(j), the following statement must be provided by the Manager to the independent plan fiduciary:

Investment decisions for the Fund (including decisions regarding which securities to buy or sell, how much of a security to buy or sell, and when to execute a sale or purchase of securities for the Fund) will not be based in whole or in part by the Manager on the availability of cross-trade opportunities and will be made prior to the identification and determination of any cross-trade opportunities. In addition, all cross-trades by a Fund will be based solely upon a ''triggering event'' set forth in this exemption. Records documenting each cross-trade transaction will be retained by the Manager.

(l) Prior to any authorization set forth in Section II(i), and at the time of any notice described in Section II(j) above, the independent plan fiduciary must be furnished with any reasonably available information necessary for the fiduciary to determine whether the authorization should be given, including (but not limited to) a copy of this exemption, an explanation of how the authorization may be terminated, detailed disclosure of the procedures to be implemented under the Manager's cross-trading practices (including the ''triggering events'' that will create the cross-trading opportunities, the independent pricing services that will be used by the manager to price the cross-traded securities, and the methods that will be used for determining closing price), and any other reasonably available information regarding the matter that the authorizing fiduciary requests. The independent plan fiduciary must also be provided with a statement that the Manager will have a potentially conflicting division of loyalties and responsibilities to the parties to any cross-trade transaction and must explain how the Manager's cross-trading practices and procedures will mitigate such conflicts.

With respect to Funds that are added to the Manager's cross-trading program or changes to, or additions of, triggering events regarding Funds, following the authorizations described in section II(i) or section II(j), the Manager shall provide a notice to each relevant independent plan fiduciary prior to, or within ten (10) days following such addition of Funds or change to, or addition of, triggering events, which contains a description of such Fund(s) or triggering event(s). Such notice will also include a statement that the plan has the right to terminate its participation in the cross-trading program and its investment in any Index Fund or Model-Driven Fund without penalty at any time, as soon as is necessary to effectuate the withdrawal in an orderly manner.

(m) At least annually, the Manager notifies the independent fiduciary for each plan that has previously authorized participation in the Manager's cross-trading program as a Fund investor, that the plan has the right to terminate its participation in the cross-trading program and its investment in any Index Fund or Model-Driven Fund without penalty at any time, as soon as is necessary to effectuate the withdrawal in an orderly manner. This notice shall also provide each independent plan fiduciary with a special termination form and instruct the fiduciary that failure to return the form to the Manager by a specified date (which shall be at least thirty (30) days following the plan's receipt of the form) shall be deemed an approval of the subject plan's continued participation in the cross-trading program as a Fund investor. Such annual re-authorization must contain disclosures regarding any new Funds that are added to the cross-trading program or any new triggering events (as defined in Section IV(d) below) that may have been added to existing Funds since the time of the initial authorization described in Section II(i), or the time of the notice described in Section II(j).

(n) With respect to a cross-trade involving a Large Account:

(1) The cross-trade is executed in connection with a portfolio restructuring program, as defined in Section IV(f) below, with respect to all or a portion of the Large Account's investments which an independent fiduciary of the Large Account has authorized the Manager to carry out or to act as a ''trading adviser,'' as defined in Section IV(g) below, in carrying out a Large Account-initiated liquidation or restructuring of its portfolio;

(2) Prior to the cross-trade, a fiduciary of the Large Account who is independent of the Manager has been fully informed of the Manager's cross-trading program, has been provided with the information required in Section II(l), and has provided the Manager with advance written authorization to engage in cross-trading in connection with the restructuring, provided that—

(A) Such authorization may be terminated at will by the Large Account upon receipt by the Manager of written notice of termination.

(B) A form expressly providing an election to terminate the authorization, with instructions on the use of the form, is supplied to the authorizing Large Account fiduciary concurrent with the receipt of the written information describing the cross-trading program. The instructions for such form must specify that the authorization may be terminated at will by the Large Account, without penalty to the Large Account, upon receipt by the Manager of written notice from the authorizing Large Account fiduciary;

(3) The portfolio restructuring program must be completed by the Manager within thirty (30) days of the initial authorization (or initial receipt of assets associated with the restructuring, if later) to engage in such restructuring by the Large Account's independent fiduciary, unless such fiduciary agrees in writing to extend this period for another thirty (30) days; and,

(4) No later than thirty (30) days following the completion of the Large Account's portfolio restructuring program, the Large Account's independent fiduciary must be fully apprised in writing of all cross-trades executed in connection with the restructuring. Such writing shall include a notice that the Large Account's independent fiduciary may obtain, upon request, the information described in Section III(a), subject to the limitations described in Section III(b). However, if the program takes longer than thirty (30) days to complete, interim reports containing the transaction results must be provided to the Large Account fiduciary no later than fifteen (15) days following the end of each thirty (30) day period.

Section III—General Conditions

(a) The Manager maintains or causes to be maintained for a period of six (6) years from the date of each cross-trade the records necessary to enable the persons described in paragraph (b) of this Section to determine whether the conditions of the exemption have been met, including records which identify:

(1) On a Fund by Fund basis, the specific triggering events which result in the creation of the model prescribed output or trade list of specific securities to be cross-traded;

(2) On a Fund by Fund basis, the model prescribed output or trade list which describes: (A) which securities to buy or sell; and (B) how much of each security to buy or sell; in detail sufficient to allow an independent plan fiduciary to verify that each of the above decisions for the Fund was made in response to specific triggering events; and

(3) On a Fund by Fund basis, the actual trades executed by the Fund on

a particular day and which of those trades resulted from triggering events.

Such records must be readily available to assure accessibility and maintained so that an independent fiduciary, or other persons identified below in paragraph (b) of this Section, may obtain them within a reasonable period of time. However, a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Manager, the records are lost or destroyed prior to the end of the six-year period, and no party in interest other than the Manager shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by sections 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of sections 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of this Section are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service,

(B) Any fiduciary of a Plan participating in a cross-trading program who has the authority to acquire or dispose of the assets of the Plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer with respect to any Plan participating in a cross-trading program or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any Plan participating in a cross-trading program, or any duly authorized employee or representative of such participant or beneficiary.

(2) If in the course of seeking to inspect records maintained by a Manager pursuant to this exemption, any person described in paragraph (b)(1)(B) through (D) seeks to examine trade secrets, or commercial or financial information of the Manager that is privileged or confidential, and the Manager is otherwise permitted by law to withhold such information from such person, the Manager may refuse to disclose such information provided that, by the close of the thirtieth (30th) day following the request, the Manager gives a written notice to such person advising the person of the reasons for the refusal and that the Department of Labor may request such information.

(3) The information required to be disclosed to persons described in paragraph (b)(1)(B) through (D) shall be limited to information that pertains to cross-trades involving a Fund or Large Account in which they have an interest.

Section IV—Definitions

The following definitions apply for purposes of this proposed exemption:

(a) *Index Fund*—Any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by the Manager or an Affiliate, in which one or more investors invest, and—

(1) Which is designed to track the rate of return, risk profile and other characteristics of an independently maintained securities index, as defined in Section IV(c) below, by either (i) replicating the same combination of securities which compose such index or (ii) sampling the securities which compose such index based on objective criteria and data;

(2) For which the Manager does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) That either contains ''plan assets'' subject to the Act, is an investment company registered under the Investment Company Act of 1940, or is an institutional investor, which may include, but not be limited to, such entities as an insurance company separate account or general account, a governmental plan, a university endowment fund, a charitable foundation fund, a trust or other fund which is exempt from taxation under section 501(a) of the Code; and

(4) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund which is intended to benefit the Manager, its Affiliates, or any party in which the Manager or an Affiliate may have an interest.

(b) *Model-Driven Fund*—Any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by the Manager or an Affiliate, in which one or more investors invest, and—

(1) Which is composed of securities the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria using independent third party data, not within the control of the Manager, to transform an Index, as defined in Section IV(c) below;

(2) Which either contains ''plan assets'' subject to the Act, is an investment company registered under the Investment Company Act of 1940, or is an institutional investor, which may include, but not be limited to, such entities as an insurance company separate account or general account, a governmental plan, a university endowment fund, a charitable foundation fund, a trust or other fund which is exempt from taxation under section 501(a) of the Code; and

(3) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund or the utilization of any specific objective criteria which is intended to benefit the Manager, its Affiliates, or any party in which the Manager or an Affiliate may have an interest.

(c) *Index*—A securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries, but only if—

(1) The organization creating and maintaining the index is—

(A) Engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients,

(B) A publisher of financial news or information, or

(C) A public stock exchange or association of securities dealers; and,

(2) The index is created and maintained by an organization independent of the Manager, as defined in Section IV(i) below; and,

(3) The index is a generally accepted standardized index of securities which is not specifically tailored for the use of the Manager.

(d) *Triggering Event:*

(1) A change in the composition or weighting of the Index underlying a Fund by the independent organization creating and maintaining the Index;

(2) A specific amount of net change in the overall level of assets in a Fund, as a result of investments in and withdrawals from the Fund, provided that: (A) Such specified amount has been disclosed in writing as a ''triggering event'' to an independent fiduciary of each plan having assets held in the Fund prior to, or within ten (10) days following, its inclusion as a ''triggering event'' for such Fund; and (B) investments or withdrawals as a result of the manager's discretion to invest or withdraw assets of a Manager Plan, other than a Manager Plan which is a defined contribution plan under which participants direct the investment of their accounts among various investment options, including such Fund, will not be taken into account in determining the specified amount of net change;

(3) An accumulation in the Fund of a specified amount of either:

(A) cash which is attributable to interest or dividends on, and/or tender offers for, portfolio securities; or

(B) Stock attributable to dividends on portfolio securities;

provided that such specified amount has been disclosed in writing as a ''triggering event'' to an independent fiduciary of each plan having assets held in the Fund prior to, or within ten (10) days after, its inclusion as a ''triggering event'' for such Fund; or

(4) A change in the composition of the portfolio of a Model-Driven Fund mandated solely by operation of the formulae contained in the computer model underlying the Fund where the basic factors for making such changes (and any fixed frequency for operating the computer model) have been disclosed in writing to an independent fiduciary of each plan having assets held in the Fund prior to, or within ten (10) days after, its inclusion as a ''triggering event'' for such Fund.

(e) *Large Account*—Any investment fund, account or portfolio that is not an Index Fund or a Model-Driven Fund sponsored, maintained, trusteed or managed by the Manager, which holds assets of either:

(1) An employee benefit plan within the meaning of section 3(3) of the Act that has $50 million or more in total assets;

(2) An institutional investor that has total assets in excess of $50 million, such as an insurance company separate account or general account, a governmental plan, a university endowment fund, a charitable foundation fund, a trust or other fund which is exempt from taxation under section 501(a) of the Code; or

(3) An investment company registered under the Investment Company Act of 1940 (*e.g.,* a mutual fund) other than an investment company advised or sponsored by the Manager;

provided that the Manager has been authorized to restructure all or a portion of the portfolio for such Large Account or to act as a ''trading adviser'' (as defined in Section IV(g) below) in connection with a specific liquidation or restructuring program for the Large Account.

(f) *Portfolio restructuring program*—Buying and selling the securities on behalf of a Large Account in order to produce a portfolio of securities which will be an Index Fund or a Model-Driven Fund managed by the Manager, without regard to the requirements of Section IV(a)(3) or (b)(2), or to carry out a liquidation of a specified portfolio of securities for the Large Account.

(g) *Trading adviser*—A person whose role is limited with respect to a Large Account to the disposition of a securities portfolio in connection with a Large Account-initiated liquidation or restructuring within a stated period of time in order to minimize transaction costs. The person does not have discretionary authority or control with respect to any underlying asset allocation, restructuring or liquidation decisions for the account in connection with such transactions and does not render investment advice [within the meaning of 29 CFR § 2510.3–21(c)] with respect to such transactions.

(h) *Closing price*—The price for a security on the date of the transaction, as determined by objective procedures disclosed to Fund investors in advance and consistently applied with respect to securities traded in the same market, which procedures shall indicate the independent pricing source (and alternates, if the designated pricing source is unavailable) used to establish the closing price and the time frame after the close of the market in which the closing price will be determined.

(i) *Manager*—A person who is:

(1) A bank or trust company, or any Affiliate thereof, as defined in Section IV(j) below, which is supervised by a state or federal agency; or

(2) An investment adviser or any Affiliate thereof, as defined in Section IV(j) below, which is registered under the Investment Advisers Act of 1940.

(j) *Affiliate*—An ''affiliate'' of a Manager includes:

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with the person;

(2) Any officer, director, employee or relative of such person, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(k) *Control*—The power to exercise a controlling influence over the management or policies of a person other than an individual.

(l) *Relative*—A ''relative'' is a person that is defined in section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

Signed at Washington, D.C., this 9th day of December, 1999.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 99–32404 Filed 12–14–99; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Cross-Trades of Securities by Investment Managers

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of hearing.

SUMMARY: This document provides notice of a public hearing regarding standards and safeguards upon which exemptive relief should be conditioned for cross-trades of securities by investment managers with respect to any account, portfolio or fund holding ''plan assets'' subject to the fiduciary responsibility provisions of Part 4 of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). The public hearing will focus primarily on the area of ''active'' cross-trading of securities by investment managers. The Department is also publishing today in the **Federal Register** a Notice of Proposed Class Exemption relating to cross-trades of securities by ''passively'' managed funds.

DATES: The hearing will be held on February 10, 2000, and on February 11th if necessary, beginning at 10 a.m. and ending at 4 p.m. each day.

ADDRESSES: The hearing will be held in Room N–5437, of the Department of Labor Building, 200 Constitution Avenue, NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Louis J. Campagna or E.F. Williams, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5649, 200 Constitution Avenue, NW, Washington, DC, 20210, (202) 219–8883 or 219–8194, respectively (these are not toll free numbers); or Michael Schloss, Plan Benefits Security Division, Office of Solicitor, (202) 219–4600, ext. 105 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On March 20, 1998, the Department of Labor (the Department) published a notice (the Notice) in the **Federal Register** (63 FR 13696) requesting information to assist it in determining upon what standards and safeguards exemptive relief for cross-trades by investment managers should be conditioned. In that Notice, the Department invited all interested persons to submit written comments concerning its request for information on or before May 19, 1998. The Department received a total of 29 written comments on the Notice, many

of which were from major industry groups and plan fiduciaries.

In response, in part, to the information received by the Department to the Notice, the Department has published in today's **Federal Register** a separate notice of proposed class exemption which would, if granted, provide an exemption for cross-trades of securities by Index and Model-Driven Funds. In the notice of proposed class exemption, the Department states that it is not proposing relief for cross-trades of securities by actively-managed plan accounts or funds at the present time. In actively-managed programs, trading decisions are made by individuals that have been hired to select particular securities as professional investment managers for ''actively-managed'' accounts. The Department notes in the proposed class exemption that information obtained from investment managers in response to the Notice regarding cross-trade practices and procedures for actively-managed accounts will be considered separately.

In view of the importance of this issue, the Department has decided to hold a public hearing regarding potential future individual or class exemptions for the cross-trades of securities by investment managers for actively-managed plan accounts or pooled funds containing ''plan assets'' subject to Title I of ERISA.

This hearing will be held on February 10, 2000, and February 11th if necessary, beginning at 10 a.m. and ending at 4 p.m., in Room N–5437 of the Department of Labor Building, 200 Constitution Avenue, NW, Washington, DC 20210.

Any interested person who wishes to be assured of an opportunity to present oral comments at the hearing should submit the following information by January 20, 2000: (1) A written request to be heard; and (2) An outline (preferably five copies) of the topics to be discussed, indicating the time allocated to each topic. The request to be heard and accompanying outline should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5649, 200 Constitution Avenue, NW, Washington, DC 20210, and marked ''Attention: Cross-Trades of Securities by Investment Managers Hearing.'' Individuals who did not file written comments regarding the Notice published by the Department in the **Federal Register** on March 20, 1998 may nonetheless submit a request to make oral comments at the hearing.

The Department will prepare an agenda indicating the order of presentation of oral comments at the hearing. In the absence of special circumstances, each commentator will be allotted fifteen minutes in which to complete his or her presentation and answer questions that may be posed by a panel of Pension and Welfare Benefits Administration employees. Information about the agenda may be obtained on or after January 27, 2000, by telephoning Fil Williams of the Office of Exemption of Determinations at (202) 219–8194 (this is not a toll free number).

Individuals not listed in the agenda will be allowed to make oral comments at the hearing to the extent time permits. Those individuals who make oral comments at the hearing should be prepared to answer questions regarding their comments. The hearing will be transcribed.

Individuals with disabilities, who need special accommodations, should notify Mr. Williams on or before January 20, 2000.

Notice of Public Hearing

Notice is hereby given that a public hearing will be held on February 10, 2000, and February 11th if necessary, regarding potential future individual or class exemptions for cross-trades of securities by investment managers for actively-managed plan accounts or pooled funds containing ''plan assets'' subject to ERISA. The hearing will be held beginning at 10 a.m. in Room N–5437 of the Department of Labor Building, 200 Constitution Avenue, NW, Washington, DC, 20210.

Signed at Washington, DC, this 9th day of December, 1999.

Alan D. Lebowitz,

Deputy Assistant Security of Program Operations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 99–32403 Filed 12–14–99; 8:45 am]

BILLING CODE 4510–29–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499]

Houston Lighting and Power Company City Public Service Board of San Antonio Central Power and Light Company City of Austin, Texas STP Nuclear Operating Company (South Texas Project, Units 1 and 2); Order Extending the Effectiveness of the Approval of the Indirect Transfer of Licenses (Merger of Central and South West Corporation and American Electric Power Company)

I.

By Order dated November 5, 1998, the Nuclear Regulatory Commission (the Commission) approved the indirect transfer of Facility Operating Licenses Nos. NPF–76 and NPF–80 to the extent such would be effected by the proposed corporate merger of Central and South West Corporation (CSW) and American Electric Power Company, Inc. (AEP). CSW is the parent holding company of Central Power and Light Company (CPL), one of the holders of the licenses. The approval was given in response to an application filed by CPL dated June 16, 1998, as supplemented, for consent of the NRC under 10 CFR 50.80. By its terms, the Order of November 5, 1998, becomes null and void if the merger is not completed by December 31, 1999, unless upon application and for good cause shown, such date is extended by the Commission.

II.

By letter dated October 25, 1999, CPL and AEP, through counsel, submitted a request for an extension of the effectiveness of the Order of November 5, 1998, such that it would remain effective until June 30, 2000. According to the submittal, because of unavoidable delays in securing all regulatory approvals, the merger between AEP and CSW will not close prior to December 31, 1999. The request further asserts that, notwithstanding the best efforts of AEP and CSW to provide complete and timely information, the Federal Energy Regulatory Commission (FERC) has not completed its review of the pending merger application before it and has not granted the necessary approvals required for consummation of the merger. FERC has issued an order in which it states that a final decision should be issued no later than March 2000.

According to their submittal, CSW and AEP have been diligent in seeking to obtain all required regulatory approvals from Federal and State

agencies. The merger has received conditional approval by State regulatory commissions in Arkansas and Louisiana, and approval in Oklahoma. Also, an administrative law judge, who conducted hearings in proceedings held by the Public Utility Commission of Texas (PUCT), recommended approval of the pending merger after AEP, CSW, the PUCT staff, and other parties reached a stipulated settlement. In addition, AEP and CSW have announced settlement agreements with the Indiana Utility Regulatory Commission, with the Missouri Public Service Commission, and with parties in Kentucky (approved by the Kentucky Public Service Commission).

CPL and AEP state that they have reviewed the original application for NRC approval of the indirect license transfers and the information relied upon by the NRC as reflected in the safety evaluation, dated November 5, 1998, and that there has been no material change in the information presented in the original application and relied upon by the NRC staff.

The staff has considered the foregoing request of October 25, 1999, and has determined that good cause has been shown to extend the effectiveness of the Order of November 5, 1998, as requested.

III.

Accordingly, pursuant to Sections 161b and 161i of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2201(b) and 2201(i), *It is hereby ordered* that the effectiveness of the Order of November 5, 1998, described herein is extended such that if the subject merger is not consummated by June 30, 2000, the Order of November 5, 1998, shall become null and void, unless upon application and for good cause shown, such date is further extended.

This Order is effective upon issuance.

For further details with respect to this action, see the request by CPL and AEP dated October 25, 1999, submitted by John O'Neill, Esq., Shaw Pittman (Counsel Jointly for CPL and AEP), which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555–0001.

Dated at Rockville, Maryland, this 7th day of December 1999.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–32490 Filed 12–14–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8968–ML and ASLBP No. 95–706–01–ML]

Hydro Resources, Inc.; Notice of Reconstitution

Pursuant to the authority contained in 10 CFR 2.721 and 2.1207, the Presiding Officer in the captioned 10 CFR Part 2, Subpart L proceeding is hereby replaced by appointing Administrative Judge Peter B. Bloch as Presiding Officer in place of Administrative Judge Thomas S. Moore.

All correspondence, documents and other material shall be filed with the Presiding Officer in accordance with 10 CFR 2.1203 (1997). The address of the new Presiding Officer is: Administrative Judge Peter B. Bloch, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Issued at Rockville, Maryland, this 9th day of December 1999.

G. Paul Bollwerk III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 99–32487 Filed 12–14–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

Duke Energy Corporation; Oconee Nuclear Station, Units 1, 2, and 3 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from 10 CFR Part 50, Appendix J, Section III.D.2(b)(ii) for Facility Operating License Nos. DPR–38, DPR–47, and DPR–55, issued to the Duke Energy Corporation (the licensee), for operation of the Oconee Nuclear Station, Units 1, 2, and 3, located in Oconee County, South Carolina.

Environmental Assessment

Identification of the Proposed Action

Whenever the plant is in cold shutdown (Mode 5) or refueling (Mode 6), containment integrity is not required. However, if an airlock is opened when in Modes 5 or 6 (which is usually the case), 10 CFR 50, Appendix J, Section III.D.2(b)(ii) requires that an overall air lock leakage test be performed before plant heatup and startup (*i.e.*, before Mode 4 is entered). The proposed exemption would allow this test requirement to be met by performing an air lock door seal leakage test per 10 CFR 50, Appendix J, Section III.D.(b)(iii) during plant startup prior to entering Mode 4. The licensee would apply this exemption only if no maintenance has been performed on the air lock that could affect its sealing capability. If maintenance has been performed that could affect its sealing capability, an overall air lock leakage test per 10 CFR 50, Appendix J, Section III.D.2(b)(ii) would be performed prior to establishing containment integrity.

The proposed action is in accordance with the licensee's application for an exemption dated October 5, 1999.

The Need for the Proposed Action

The existing air lock doors are designed so that the air lock pressure test can only be performed after a strong back (structural bracing) has been installed on the inner door because the pressure used to perform the test is opposite that of accident pressure and would tend to unseat the door. Performing the full air lock test in accordance with the present requirements takes approximately 12 hours, since it requires installation of the strong back, performing the test, and removing the strong back. During the test, access through the air lock is prohibited, which, therefore, requires evacuation of personnel from the containment or the personnel must remain inside the containment during the test until Mode 4 is reached. The licensee has determined that pressurizing the volume between the seals to 60 pounds per square inch gauge pressure prior to establishing containment integrity provides the necessary surveillance to ensure the sealing capability of the door seals.

Since plant personnel usually need to enter the containment while in Mode 5, the full pressure air lock test must be performed almost every time before entering Mode 4 from Mode 5. Exemption from the full pressure leakage test would reduce the number of tests performed and the time required to perform the tests, which would provide greater plant flexability over the lifetime of the plant.

Environmental Impact of the Proposed Action

The proposed exemption would permit the substitution of an air lock seal leakage test (10 CFR Part 50, Appendix J, Section III.D.2(b)(iii)) for the full pressure air lock test otherwise required by 10 CFR Part 50, Appendix J, Section III.D.2(b)(ii) when the air lock is opened while the reactor is in the cold shutdown or refueling modes. If

the tests required by 10 CFR Part 50, Appendix J, Section III.D.2(b)(i) and (iii) are current, and there has been no maintenance performed on the air lock, then adequate assurance of leak tight integrity of the air lock continues to exist. Consequently, this exemption will not affect containment integrity and does not affect the risk of facility accidents.

Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption, the proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological environmental impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Oconee Nuclear Station, Units 1, 2, and 3.

Agencies and Persons Consulted

In accordance with its stated policy, on November 30, 1999, the staff consulted with the South Carolina State official, Mr. Virgil Autry, of the Division of Radiological Waste Management, Bureau of Land and Waste Management, Department of Health and Environmental Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 5, 1999, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publically available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 9th day of December 1999.

For the Nuclear Regulatory Commission.

Richard L. Emch, Jr.,

Chief, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–32491 Filed 12–14–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–410]

Niagara Mohawk Power Corporation; Nine Mile Point Nuclear Station, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an amendment to Facility Operating License No. NPF–69 issued to Niagara Mohawk Power Corporation (the licensee), for operation of the Nine Mile Point Nuclear Station, Unit 2 (NMP2), located in Oswego County, New York.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment will revise the existing, or current, Technical Specifications (CTS) for NMP2 in their entirety based on the guidance provided in NUREG–1433 and NUREG–1434, ''Standard Technical Specifications for General Electric Plants, BWR/4 and BWR/6,'' Revision 1, dated April 1995, and in the Commission's ''Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors,'' published on July 22, 1993 (58 FR 39132). The proposed amendment is in accordance with the licensee's amendment request dated October 16, 1998, as supplemented by letters dated December 30, 1998; and May 10, June 15, July 30, August 11, 16, 19, 27, and September 10, 1999.

The Need for the Proposed Action

It has been recognized that nuclear safety in all nuclear power plants would benefit from an improvement and standardization of plant Technical Specifications (TS). The ''NRC Interim Policy Statement on Technical Specification Improvements for Nuclear Power Plants,'' (52 FR 3788) contained proposed criteria for defining the scope of TS. Later, the Commission's ''Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors,'' published on July 22, 1993 (58 FR 39132), incorporated lessons learned since publication of the interim policy statement and formed the basis for revisions to 10 CFR 50.36, ''Technical Specifications.'' The ''Final Rule'' (60 FR 36953) codified criteria for determining the content of TS. To facilitate the development of standard TS for nuclear power reactors, each power reactor vendor owners' group (OG) and the NRC staff developed standard TS. For NMP2, the Improved Standard Technical Specifications (ISTS) are in NUREG–1433 and NUREG–1434, Revision 1. These documents formed part of the basis for the NMP2 Improved Technical Specifications (ITS) conversion. The NRC Committee to Review Generic Requirements (CRGR) reviewed the ISTS, made note of its safety merits, and indicated its support of the conversion by operating plants to the ISTS.

Description of the Proposed Change

The proposed changes to the CTS are based on NUREG–1433 and NUREG–1434, Revision 1, and on guidance provided by the Commission in its Final Policy Statement. The objective of the changes is to completely rewrite, reformat, and streamline the CTS (i.e., to convert the CTS to the ITS). Emphasis is placed on human factors principles to improve clarity and understanding of the TS. The Bases section of the ITS has been significantly expanded to clarify and better explain the purpose and foundation of each specification. In addition to NUREG–1433 and NUREG–1434, Revision 1, portions of the CTS were also used as the basis for the development of the NMP2 ITS. Plant-specific issues (*e.g.,* unique design features, requirements, and operating practices) were discussed with the licensee, and generic matters were discussed with General Electric and other OGs.

The proposed changes from the CTS can be grouped into the following four categories: relocated requirements, administrative changes, less restrictive changes involving deletion of requirements, and more restrictive changes. These categories are as follows:

1. Relocated requirements (i.e., the licensee's LG or R changes) are items which are in the CTS but do not meet the criteria set forth in 10 CFR 50.36. This regulation establishes a specific set of objective criteria for determining which regulatory requirements and operating restrictions should be included in the TS. Relocation of requirements to documents with an established control program, controlled by the regulations or the TS, allows the TS to be reserved only for those conditions or limitations upon reactor operation which are necessary to obviate the possibility of an abnormal situation or event giving rise to an immediate threat to public health and safety, thereby focusing the scope of the TS. In general, the proposed relocation of items from the CTS to the Updated Safety Analysis Report (USAR), appropriate plant-specific programs, plant procedures, or ITS Bases follows the guidance of NUREG–1433 and NUREG–1434, Revision 1. Once these items have been relocated to other licensee-controlled documents, the licensee may revise them under the provisions of 10 CFR 50.59 or other NRC-approved control mechanisms, which provide appropriate procedural means to control changes by the licensee.

2. Administrative changes (i.e., the licensee's A changes) involve the reformatting and rewording of requirements, consistent with the style of the ISTS in NUREG–1433 and NUREG–1434, Revision 1, to make the TS more readily understandable to plant operators and other users. These changes are purely editorial in nature, or involve the movement or reformatting of requirements without affecting the technical content. Application of a standardized format and style will also help ensure consistency is achieved among specifications in the TS. These changes involve reformatting and rewording; no technical changes (either actual or interpretational) to the TS will be made with respect to these changes.

3. Less restrictive changes and the deletion of requirements involve portions of the CTS (*i.e.,* the licensee's LS and TR changes) which (1) provide information that is descriptive in nature regarding the equipment, systems, actions, or surveillances, (2) provide little or no safety benefit, and (3) place an unnecessary burden on the licensee. This information is proposed to be deleted from the CTS and, in some instances, moved to the proposed Bases, USAR, or procedures. The removal of descriptive information to the Bases of the TS, USAR, or procedures is permissible because these documents will be controlled through a process that utilizes 10 CFR 50.59 and other NRC-approved control mechanisms. The relaxations of requirements were the result of generic NRC actions or other analyses. They will be justified on a case-by-case basis for NMP2 and described in the safety evaluation to be issued with the license amendment.

4. More restrictive requirements (i.e., the licensee's M changes) are proposed to be implemented in some areas to impose more stringent requirements than are in the CTS. In some cases, these more restrictive requirements are being imposed to be consistent with the ISTS. Such changes have been made after ensuring the previously evaluated safety analysis for NMP2 was not affected. Also, other more restrictive technical changes have been made to achieve consistency, correct discrepancies, and remove ambiguities from the TS. Examples of more restrictive requirements include: placing a limiting condition for operation (LCO) on plant equipment which is not required by the CTS to be operable; more restrictive requirements to restore inoperable equipment; and more restrictive surveillance requirements.

There are other proposed changes to the CTS that may be included in the proposed amendment to convert the CTS to the ITS. These are beyond-scope changes (changes that are not consistent with the CTS and/or NUREG–1433 and NUREG–1434, Revision 1) in that they are changes to both the CTS and the ISTS. For the NMP2, these are the following:

1. ITS 3.1.8, changing the Scram Discharge Volume Vent and Drain Valve ACTIONS to allow continued operation with one valve in a line inoperable by isolating the penetration within 7 days (ACTION A) and to allow continued operation with two valves in a line inoperable by isolating the penetration within 8 hours (ACTION B). The ISTS requires the valves(s) to be restored to Operable status within 7 days.

2. ITS 3.3.1.1, ITS 3.3.6.1, ITS 3.5.1, and ITS 3.5.2, adding a Note to the Reactor Protection System (RPS) (Functions 3 and 4) and Isolation (Main Steam Line Isolation Valve (MSIV) Functions) Instrumentation Specifications exempting the sensors from response time testing and a Note to the Emergency Core Cooling System (ECCS)—Operating and—Shutdown Specifications exempting the instrumentation from response time testing.

3. ITS 3.3.2.2, allowing the feedwater pump to be removed from service in lieu of shutting down the unit to <25 percent Rated Thermal Power (RTP) when the feedwater and main turbine high water level channels are inoperable and untripped.

4. ITS 3.3.3.1, ITS 3.3.3.2, ITS 3.3.8.2, ITS 3.3.8.3 and ITS 3.4.7, adding a Note to allow 6 hours to do Surveillance testing of the Post Accident Monitoring, Remote Shutdown System, RPS logic bus Electrical Power Monitoring Assemblies (EPAs), RPS scram solenoid bus EPAs and Leak Detection System, instrumentation channels prior to entering ACTIONS.

5. ITS 3.3.4.2, adding an allowance to only remove the associated Anticipated Transient Without Scram (ATWS)-recirculation pump trip (RPT) breaker (fast speed or slow speed, as applicable) from service, in lieu of removing the entire pump from service.

6. ITS 3.3.5.1, ITS 3.3.8.1, ITS 3.3.8.2 and ITS 3.3.8.3, changing the Allowable Values for (a) the Low-Pressure Cooling Injection (LPCI) and High-Pressure Core Spray (HPCS) minimum flow valves instrumentation; (b) the HPCS suppression pool water level swap over instrumentation; (c) the Loss of Voltage and Degraded Voltage Functions, including time delays; (d) the Undervoltage, Overvoltage, and Underfrequency Functions for the RPS Logic Bus EPAs; and (e) the Undervoltage, Overvoltage, and Underfrequency Functions for the RPS Scram Solonoid Bus EPAs.

7. ITS 3.3.6.1, deleting the MODE 1 and 2 requirements for certain Shutdown Cooling Isolation Functions (residual heat removal (RHR) Equipment Area temperature, Reactor Building Pipe Chase Temperature, Reactor Building Temperature, and Reactor Vessel Water Level—Low, Level 3.)

8. ITS 3.3.8.1 and ITS 3.3.5.1, deleting the Group 4 valves from isolation instrumentation requirements.

9. ITS 3.3.8.1, changing the requirement to only requiring 2 channels of degraded voltage and loss of voltage in lieu of three channels.

10. ITS SR 3.4.1.1 requiring verification every 12 hours that operation is in the ''Unrestricted Zone'' of ITS Figure 3.4.1–1.

11. ITS 3.4.1, changing from 2 hours to 8 hours, the frequency for determining the Average Power Range Monitors (APRM) and Low Power Range Monitors (LPRM) baseline noise level the first time the unit is in the Restricted Zone.

12. ITS 3.4.5, changing the frequency for monitoring the floor drain leakage rate from 8 hours to 12 hours, and changing the airborne radioactivity monitoring Surveillance to be every 8 hours.

13. ITS 3.5.1, changing the current number of Automatic Depression System (ADS) valves required to operate from seven to six.

14. ITS 3.5.1, modifying the current requirement of manually opening the ADS valves to only require the ADS actuators to be cycled.

15. ITS 3.6.1.3, changing the current requirement that each excess flow check valve (EFCV) must ''check flow'' to requiring each EFCV to actuate to its isolation position on an actual or simulated instrument line break signal.

16. ITS 3.6.1.3, changing the evolution to suspend the purging and venting LCO ACTIONS to within 1 hour, when Standby Gas Treatment (SGT) subsystem(s) are inoperable.

17. ITS 3.6.1.6, ITS 3.6.2.3 and ITS 3.5.2.4, deleting the current requirements to verify position of ''automatic'' valves in the RHR Drywell Spray, RHR Suppression Cooling, and RHR Suppression Pool Spray Systems.

18. ITS 3.6.1.6 and ITS 3.6.2.4, deleting the current requirement that drywell spray and suppression pool spray flows be through the heat exchanger.

19. ITS 3.7.2 and ITS 3.7.3, allowing a 7-day restoration time when both Control Room Envelope Filtration (CREF) subsystems are inoperable and a 30-day restoration time when both control room envelope alternating current (AC) subsystems are inoperable, provided the remaining components of the CREF System or Control Room Envelope AC System maintains the CREF System or Control Room Envelope AC System safety function, as applicable.

20. ITS 3.8.1, ITS 3.8.2, and ITS 3.8.3, changing AC Sources—Operating, AC Sources—Shutdown and Diesel Fuel Oil, Lube Oil, and Starting Air Specifications to include: (a) more restrictive upper and lower voltage limits for various diesel generator (DG) Surveillances; (b) increasing the killowatt (kW) value for the single largest load surveillance requirement (SR) for the Division 3 DG; (c) relaxing the load range values for the 24-hour DG run to be consistent with Regulatory Guide (RG) 1.9 Revision 3 (ISTS Bases says 100 percent for 22 hours and 110 percent for 2 hours is consistent with RG 1.9 Reference 3, which is not accurate); (d) increasing the DG start time in the event of a Loss of Voltage signal from 13 seconds to 13.12 seconds; (e) adding a Note which exempts Surveillances pertaining to a DG starting on a loss-of-coolant accident (LOCA) signal and a LOCA/loss of offsite power (LOOP) signal while in Modes 4 and 5 and during handling of irradiated fuel in the Secondary Containment when the ECCS subsystems are not required to be Operable; and (f) increasing the fuel oil storage tank limits for the Division 1 and 2 DGs as well as the 6-day limits for all three DGs.

21. ITS 3.8.4, changing the DC Sources—Operating Specification by: (a) revising the battery load profile to be consistent with the load profile specified in the USAR; and (b) adding an allowance to perform a modified performance discharge test every cycle in lieu of a service test.

22. ITS 3.8.7, requiring that the inverters be capable of being powered from an uninterruptible power supply (direct current (DC) source). Currently, this is not required; this is a more restrictive change.

23. ITS 3.3.8.3, specifying an allowable value in the ITS for the time delay setting of the RPS EPA—solenoid instrumentation.

24. ITS 3.3.8.1, deleting a requirement in the ISTS for performing a channel check on undervoltage relays; the status of relays are continuously monitored.

25. ITS 3.3.8.2, specifying allowances in allowable values for the time delay settings of the RPS EPA logic instrumentation.

26. ITS 3.3.4.2, adding additional verification of ATWS trip function bypass and time delays.

27. ITS 3.3.8.1, The STS allows a 2-hour delay from entering into the associated Conditions and Required Actions for a channel placed in an inoperable status solely for the performance of required surveillances, provided the associated function maintains DG initiation capability. This is changed in the ITS ''provided the Associated Function maintains ''LOP'' [loss of power] initiation capability.''

28. ITS 5.5.9.1.a, adding ''specific gravity'' to the acceptability of new fuel oil before adding to the DG fuel tanks.

29. ITS SR 3.6.3.1.2, adding a description of an additional requirement in the Bases SR 3.6.3.1.2 regarding when to perform the surveillance (''within 30 minutes following heatup of the system to normal operating temperature.'')

30. ITS SR 3.3.1.1.16, modifying the Response Time Testing requirement for Function 9, Turbine Control Valve Fast Closure, Trip Oil Pressure—Low by stating that the response time is measured from the start of the control valve fast closure, not when the sensor (oil pressure sensor) exceeds its setpoint.

31. ITS 3.3.5.1, specifying an ADS pressure setpoint of 150 psig, implementing Topical Report NEDC–32291, and making other changes associated with moving Group 4 isolation valves into the ECCS TS in the ITS.

32. ITS 3.3.5.1, Table 3.3.5.1–1, specifying an ADS pressure setpoint for low-pressure core spray (LPCS) pump discharge pressure—high to be 150 psig based on implementation of Topical Report NEDC–32291.

33. ITS 3.3.2.1, deleting operational details in CTS Table 3.3.6–2 (Control Rod Block Instrumentation Set Points) not required to be TS, and providing allowable values based on NEDO–2411 which is not referenced in the ISTS.

34. ITS 3.3.6.1, deleting the reactor core isolation cooling (RCIC) drywell pressure high isolation functions, providing new RCIC/RHR Steam Flow Timer and SGT Exhaust Radiation High isolation functional allowable values, and deleting the main steam line (MSL) radiation high isolation function.

35. ITS 3.6.1.2, changing the requirement to verify that the air lock door seal leakage rate is within limit from ''once per 7 days'' to ''once in 30 days.''

36. ITS 3.6.1.7, adding a note to allow a separate condition entry for each suppression chamber-to-drywell vacuum breaker.

37. ITS 3.6.1.7, changing the ACTION statement into two ACTION statements: ITS 3.6.1.7 ACTION B addresses the closing of the open vacuum breaker within 72 hours, while ITS 3.6.1.7 ACTION C addresses the verification/closing of the other vacuum breaker in the line within 2 hours. However, both ITS 3.6.1.7 Conditions B and C have been modified such that the words ''One or more lines with'' have been added.

38. ITS 3.4.4, increasing the lift setpoint tolerance for the safety/relief valves to 3 percent.

39. ITS 3.3.1.1, deleting the MSL radiation monitor reactor trip requirement and surveillance requirement based on the application of NEDO–31400A.

40. ITS 3.7.2, SR 3.7.2.1, deleting the staggered testing requirement for the CREF subsystem.

41. ITS 3.3.1.2, adding a note to ITS SR 3.3.1.2.5 that defers determination of the signal-to-noise ratio in Mode 5 if less than or equal to four fuel assemblies are adjacent to the source range monitors (SRM) and no fuel is in the quadrant.

42. ITS 3.3.1.2, changing the STS Action to ''initiate action to insert all

insertable control rods * * *'' to ''Initiate action to ''fully'' insert all insertable control rods * * *''

43. ITS 3.3.5.1, ITS Table 3.3.5.1–1, changing footnote (a) from the STS to include a citation of LCO 3.5.2 which amplifies the ECCS equipment instrumentation requirements.

44. ITS 5.5.2.b, adding a note that the provisions of SR 3.0.2 apply to integrated leak tests at 24 months.

45. ITS 3.8.8, incorporating changes to Condition A, B and C of the STS applicable to ''one or more'' Divisions and to ''one or both.''

46. ITS 3.6.4.1, incorporating wording changes that alter the meaning of containment operability with respect to meeting surveillance requirements which relates to whether the inoperability of the standby gas treatment system constitutes a failure of the surveillance of the secondary containment integrity test.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed conversion of the CTS to the ITS for NMP2, including the beyond-scope issues discussed above. Changes which are administrative in nature have been found to have no effect on the technical content of the TS. The increased clarity and understanding these changes bring to the TS are expected to improve the operators' control of NMP2 in normal and accident conditions.

Relocation of requirements from the CTS to other licensee-controlled documents does not change the requirements themselves. Future changes to these requirements may then be made by the licensee under 10 CFR 50.59 and other NRC-approved control mechanisms which will ensure continued maintenance of adequate requirements. All such relocations have been found to be consistent with the guidelines of NUREG–1433 and NUREG–1434 and 10 CFR 50.36 does not require that the requirements be included in the TS.

Changes involving more restrictive requirements have been found to enhance plant safety.

Changes involving less restrictive requirements have also been reviewed. When requirements have been shown to provide little or no safety benefit, or to place an unnecessary burden on the licensee, their removal from the TS was justified. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of a generic action, or of agreements reached during discussions with the OG, and found to be acceptable for the plant. Generic relaxations contained in NUREG–1433 and NUREG–1434, Revision 1, have been reviewed by the NRC staff and found to be acceptable.

In summary, the proposed revisions to the TS were found to provide control of plant operations such that reasonable assurance will be provided that the health and safety of the public will be adequately protected.

The proposed amendment will not increase the probability or consequences of accidents, will not change the quantity or types of any effluent that may be released offsite, and will not significantly increase the occupational or public radiological exposure. Also, these changes do not increase the licensed power and allowable effluents for the plant. The changes will not create any new or unreviewed environmental impacts that were not considered in the Final Environmental Statement (FES) related to the operation of NMP2, (NUREG–1085, dated May 1985). Therefore, there are no significant radiological impacts associated with the proposed amendment.

With regard to potential non-radiological impacts, the proposed amendment involves features located entirely within the restricted area for the plant defined in 10 CFR Part 20 and does not involve any historical sites. They do not affect non-radiological plant effluents and have no other environmental impact. They do not increase any discharge limit for the plant. Therefore, there are no significant non-radiological environmental impacts associated with the proposed amendment.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for NMP2, dated May 1985.

Agencies and Persons Consulted

In accordance with its stated policy, the staff consulted with the New York State official, Jack Spath, of the New York Energy and Research Authority on November 4, 1999, regarding the environmental impact of the proposed amendment. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed amendment will not have a significant adverse effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's application dated October 16, 1998, as supplemented by letters dated December 30, 1998; and May 10, June 15, July 30, August 11, 16, 19, 27, and September 10, 1999, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publically available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Electronic Reading Room).

Dated at Rockville, Maryland, this 9th day of December 1999.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick,

Acting Chief, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–32492 Filed 12–14–99; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Northeast Nuclear Energy Company (NNECO), et al., Millstone Nuclear Power Station, Unit No. 3, Environmental assessment and finding of no significant impact (correction)

The following is a correction to the Environmental Assessment and Finding of No Significant Impact that was published in the **Federal Register** on September 7, 1999 (64 FR 48675). Changes are indicated by double bracketed text. The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. NPF–49, issued to Northeast Nuclear Energy Company, et al. (the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 3 (MP3) located in New London County, Connecticut. The changes correct an error made

regarding when the spent fuel storage pool at MP3 will no longer be capable of supporting a full core off-load. MP3 will continue to have full core off-load capability until after refueling outage 7, currently scheduled for early calendar year 2001.

The first paragraph under ''The Need for the Proposed Action'' is changed to read:

The Need for the Proposed Action

An increase in spent fuel storage capacity is needed to maintain the capability for a full core off-load. [[Loss of full core off-load capability will occur as a result of refueling outage 7 (RFO 7), that is scheduled to start early in calendar year 2001.]] The licensee plans to install an additional 15 high density storage racks (with the capacity to store 1,104 fuel assemblies) following RFO 6 (14 will be installed between RFO 6 and RFO 7, with the last one to be installed later if it is necessary), while keeping the existing racks in place. The additional capacity will increase the capability for a full core off-load as the unit approaches the end of its operating license (November 25, 2025).

Similarly, the first paragraph under ''Reduction of Spent Fuel Generation'' is changed to read:

Reduction of Spent Fuel Generation

Generally, improved usage of the fuel and/or operation at a reduced power level would be an alternative that would decrease the amount of fuel being stored in the pool and thus increase the amount of time before full core off-load capacity is lost. With extended burnup of fuel assemblies, the fuel cycle would be extended and fewer off-loads would be necessary. [[This is not an alternative for resolving the loss of full core off-load capability because the spent fuel pool currently has the capacity for only one more full core off-load and some of the fuel to be off-loaded following RFO 7, currently scheduled for early in calendar year 2001, will have completed its operating history in the core. With the additional fuel left in the spent fuel pool after RFO 7, MP3 will no longer have the capability to conduct a full core off-load.]] Operating the plant at a reduced power level would not make effective use of available resources, and would cause unnecessary economic hardship on the licensee and its customers. Therefore, reducing the amount of spent fuel generated by increasing burnup further or reducing power is not considered a practical alternative.

Agencies and Persons Contacted

In accordance with its stated policy, on October 8, 1999, the staff consulted with the Connecticut State official, Mr. Denny Galloway of the Department of Environmental Protection, regarding the correction of the environmental assessment for the proposed action. The State official had no comments.

For further details with respect to the proposed action, see the licensee's letter dated March 19, 1999, which is available for public inspection at the U.S. Nuclear Regulatory Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publically available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http: www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 9th day of December 1999.

For the Nuclear Regulatory Commission.

James W. Clifford,

Chief, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–32489 Filed 12–14–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 20, 1999, through December 3, 1999. The last biweekly notice was published on December 1, 1999 (64 FR 67330).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be

examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By January 14, 2000, 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 electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (*Project Director*): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Electronic Reading Room)

Baltimore Gas and Electric Company, Docket No. 50–317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland

Date of amendment request: November 18, 1999.

Description of amendment request: The proposed amendment revises the Unit 1 Heatup Curve (Technical Specification Figure 3.4.3–1), Unit 1 Cooldown Curve (Technical Specification Figure 3.4.3–2), and Unit 1 Maximum Power-Operated Relief Valve (PORV) Opening Pressure vs Temperature Curve (Technical Specification Figure 3.4.12–1) to change fluence level from 2.61×10^{19} n/cm^2 to 4.49×1019 n/cm^2 (E>1MeV). This change reflects the new actual fluence level for which these curves are valid, and is necessary to extend the

applicability of the curves for Unit 1 operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

In accordance with 10 CFR Part 50, Appendix G, the Calvert Cliffs pressure/temperature (P–T) limits for material fracture toughness requirements of the reactor coolant pressure boundary materials were developed using the methods of linear elastic fracture mechanics and the guidance found in the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section III, Appendix G. The Calvert Cliffs (P–T) limits are based on fluence level. The fluence level corresponds to the pressurized thermal shock (PTS) screening criteria defined in 10 CFR 50.61 for the critical elements. Methods described in the Nuclear Regulatory Commission Regulatory Guide 1.99, Revision 2, are used to predict the embrittlement effect of neutron irradiation on reactor vessel materials. Regulatory Guide 1.99 defines embrittlement effect in terms of adjusted reference temperatures (ART), which depends on the material property of the PTS critical element.

The proposed higher fluence level for the Technical Specification P-T limits was made possible by the identification of a new 10 CFR 50.61 critical element for fracture toughness requirements for protection against PTS events. The material properties of the new critical element resulted in an increase in fluence level from 2.61×10^{19} n/cm^2 to 4.49×1019 n/cm^2 for the ART valves calculated using the material properties of the old PTS critical element. the P–T limits analysis remain well within the conservative acceptance limits of the ASME Boiler and Pressure Vessel Code, Section III, Appendix G. Hence, with the new higher fluence level, the 10 CFR Part 50, Appendix G, requirement for adequate margin to brittle failure during normal operation, anticipated operational occurrences, and system hydrostatic tests, for the reactor coolant pressure boundary materials, is maintained.

Therefore the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accidents previously evaluated.

The implementation of the proposed revision has no significant effect on either the configuration of the plant, or the manner in which it is operated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

As discussed above, the P-T limits analysis remain well within the conservative acceptance limits of the ASME Boiler and Pressure Vessel Code, Section III, Appendix G. Hence, with the new higher fluence level, the 10 CFR Part 50, Appendix G, requirement for adequate margin to brittle failure during normal operation, anticipated operational occurrences, and system hydrostatic tests, for the reactor coolant pressure boundary materials, is maintained.

Therefore, this proposed modification does not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Acting Section Chief: Victor Nerses.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: November 19, 1999.

Description of amendments request: The amendments request approval of changes in the Updated Final Safety Analysis Report (UFSAR) that constitute an unreviewed safety question (USQ) as described in 10 CFR 50.59. Specifically, these changes would be an increase in the probability of occurrence of malfunction. Additionally, these changes were not previously evaluated in the UFSAR.

Regulations require that structures, systems, and components important to safety be appropriately protected against the effects of effects of missiles that might result from equipment failures. Failures that could occur in the large turbines of the main turbine-generator sets have the potential for producing large high-energy missiles (hereinafter called ''turbine missiles''). Both of Baltimore Gas and Electric Company's (BGE) turbine generator suppliers studied the failure of the rotating elements of their turbine-generators. The UFSAR only addresses a turbine missile hitting the Containment Building, Control Room, Switchgear Room, and Waste Processing Area. As a result of revising the Unit 1 and Unit 2 turbine missile analysis, BGE determined that the discussion of turbine missiles in Section 5.3.1 of the UFSAR was incomplete. Specifically, it did not discuss the probability of a missile from the Unit 1 turbine-generator striking: 1) the refueling water tanks; 2) the No. 11 Fuel Oil Storage Tank; or 3) plant equipment through various roof slabs or through non-missile-proof openings in the missile-proof walls. When these additional targets are included, the total target area is increased. If the target area increases, the probability of a turbine missile causing equipment damage increases. It is this increase in probability that leads to a USQ for a turbine missile from Unit 1. Note that by using methodologies previously approved by NRC, the revised analysis concludes there is no USQ for turbine missiles from the Unit 2 turbine-generator.

The UFSAR change is considered a USQ for Units 1 and 2 because the results of the revised Unit 1 turbine missile analysis for the following unprotected rooms or components show an increase in probability of occurrence of malfunction not previously evaluated in the UFSAR:

the Refueling Water Tanks;

the No. 11 Fuel Oil Storage Tank (non-missile-proof);

the saltwater pumps through roof hatches in the Intake Structure roof;

the roof slabs over the refueling Water Tank Pump Room, the Control Room Heating, Ventilation, and Air Conditioning (HVAC) Equipment Room, the Spent Fuel Pool Area Ventilation Equipment room, and a portion of 118• level roof over the fuel cask handling area;

the Control Room HVAC Room through its non-missile-proof door; and

the Unit 1 Auxiliary Building 45• Switchgear Room through the its non-missile-proof doors.

The probability of a missile from the Unit 1 turbine-generator striking them is a negligible increase in the probability of occurrence of malfunction of equipment associated with Unit 1 and 2. Upon approval of this request, the UFSAR will be revised to reflect the proposed turbine missile description. There is no USQ associated with the Unit 2 turbine-generator.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Regulations require that structures, systems, and components important to safety be appropriately protected against the effects of missiles that might result from equipment failures. Further that could occur in the large turbines of the main turbine-generator sets have the potential for producing large high-

energy missiles (hereinafter called turbine missiles). Both of our turbine-generator suppliers studied the failure of the rotating elements of their turbine-generators. The UFSAR only addresses turbine missile hitting the Containment Building, Control Room, Switchgear Room, and Waste Processing Area. As result of revising the Unit 1 and Unit 2 turbine missile analysis, we determined that the discussion of turbine missiles of the UFSAR was incomplete. From the revised analysis, we determined Unit 1 and 2 USQs exist for the following unprotected rooms or components (i.e., there is an increase in probability of occurrence of malfunction not previously evaluated in the UFSAR):

the Refueling Water Tanks;

the No. 11 Fuel Oil Storage Tank;

the Saltwater Pumps through roof hatches in the Intake Structure Roof;

the roof slabs over the Refueling Water Tank Pump Room, the Control Room Heating, Ventilation, and Air Conditioning (HVAC) Equipment Room, Spent Fuel Pool Area Ventilation Equipment Room, and a portion of 118′ level roof over the cask handling area;

the Control Room HVAC Room through its non-missile-proof door; and,

the Unit 1 Auxiliary Building 45′ Switchgear Room through its non-missile-proof doors.

The probability of a missile from the Unit 1 turbine-generator striking them is a negligible, but greater than zero, increase in the probability of occurrence of malfunction of equipment associated with Units 1 and 2.

For Unit 1 High Trajectory Missiles (HTM), the guidance of NUREG 0800, Standard Review Plan, is used as one acceptable method for evaluating the risk. Use of this method is not a commitment to the Standard Review Plan and does not incorporate the Standard Review Plan into our licensing basis. The revised analysis shows that the total target area considered vulnerable to an HTM is less than the Standard Review Plan limit of 10,000 ft^2 for each unit. Therefore, the risk form an HTM is insignificant. Note that all of the Units 1, 2, and Common structures listed above are equally vulnerable to a Unit 1 HTM. Therefore, any risk increase to the plant structures constitutes a USQ for Units 1 and 2.

For Unit 1 Low-Trajectory Missiles (LTMs), protection for the Auxiliary Building is provided by a 3' thick, concrete, missile-proof wall between the Turbine Building and the Auxiliary building (the K-line wall). This wall is 3' thick below the 69' elevation and 2' thick above the 69' for areas protecting safety-related equipment. The revised analysis evaluates the protection of Unit 1 equipment from a Unit 1 LTM. The 69' Control Room HVAC Equipment Room and Unit 1 Auxiliary Building 45' Switchgear Room are protected by the missile-proof walls except for the openings at the non-missile-proof doors. A turbine missile that hits one of these doors is assumed to go through them, strike safety-related equipment in the room, and cause it to fail. Recall that the Control Room HVAC equipment is shared by both units. Therefore, any increase in risk of failure of equipment in this room affects both Units 1 and 2.

The risk associated with a turbine missile to either of these doors is calculated using guidance in Regulatory Guide 1.115, Revision 1, ''Protection Against Low-Trajectory Turbine Missiles.'' This guidance states that the turbine missile hazard should be less than 10^7. The missile hazard rate in the revised risk analysis shows that the risk from LTMs from the Unit 1 General Electric turbine-generator to the 69' Control Room HVAC Equipment Room and Unit 1 Auxiliary Building 45' Switchgear room through these non-missile-proof doors is less than 10^7.

Based on the above, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed change makes no physical changes to the plant. Specifically, the proposed change does not add new or modify existing plant equipment such that it could become an accident initiator different from its current role as an accident initiator. The only change made by this activity is the revision of the UFSAR to include the revised turbine missile analysis. The UFSAR chapter 1 drawings correctly depict the location of plant structures and components, including the thickness of and the openings in the missile-proof wall between the Turbine Building and the Auxiliary building (the K-Line Wall). Therefore, the possibility of a new or different type of accident is not created by the proposed change.

3. Would not involve a significant reduction in a margin of safety.

The regulations require an evaluation of turbine missiles to ensure that structures, systems, and components important to safety be appropriately protected from them. Revised turbine missile analysis have been performed consistent with appropriate regulatory guidance (Regulatory Guide 1.115 and the Standard Review Plan). The results of the revised analysis meet the acceptance criteria of the guidance. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Acting Section Chief: Victor Nerses.

Carolina Power & Light Company, et al., Docket No. 50–325, Brunswick Steam Electric Plant, Unit 1, Brunswick County, North Carolina

Date of amendment request: November 17, 1999.

Description of amendment request: The proposed amendment would change Technical Specification (TS) 2.1.1.2, ''Reactor Core Safety Limits.'' The minimum critical power ratios (MCPR) for single and two recirculation loop operation would be increased. In addition, the reference in TS 5.6.5, ''Core Operating Limits Report,'' Item b.5, would be removed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed license amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed license amendment will establish MCPR Safety Limit values of 1.10 for two recirculation loop operation and 1.11 for single recirculation loop operation. Additionally, the proposed license amendment replaces an expiring cycle-specific reference in the list of analytical methods approved for determining core operating limits in Specification 5.6.5.b with a reference to a GE [General Electric] topical report which has been accepted by the NRC.

The methods for calculating the MCPR Safety Limit values have been previously approved by the NRC and are described in GE's reload licensing methodology topical report NEDE–24011–P–A. Use of these methods ensures that the integrity of the fuel will be maintained during normal operation and that the resulting MCPR Safety Limit values satisfy the fuel design safety criteria that less than 0.1 percent of the fuel rods experience boiling transition if the safety limits are not violated. The change does not require any physical plant modifications, physically affect any plant components, or allow the plant to be operated any closer to fuel design limits. Therefore, the proposed change to the MCPR Safety Limit values and to the list in Specification 5.6.5.b of analytical methods approved for determining core operating limits results no increase in the probability of a previously evaluated accident.

The consequences of a previously evaluated accident are dependent on the initial conditions assumed for the analysis, the behavior of the fuel during the accident, the availability and successful functioning of the equipment assumed to operate in response to the accident, and the setpoints at which these actions are initiated.

The methods used for calculating the MCPR Safety Limits have been approved by the NRC and are described in GE's reload licensing methodology topical report NEDE–24011, ''General Electric Standard Application for Reactor Fuel (GESTAR II).'' The proposed MCPR Safety Limit values of 1.10 for two recirculation loop operation and 1.11 for single recirculation loop operation will ensure that less than 0.1 percent of the fuel rods will experience boiling transition during any plant operation if the limits are not violated. The proposed change to the MCPR Safety Limit values does not affect the performance of any equipment used to mitigate the consequences of a previously evaluated accident. Also, the proposed change does not affect setpoints that initiate protective or mitigative actions. No analysis assumptions are violated and there are no adverse effects on the factors contributing to offsite and onsite dose.

Based on the determination of the proposed MCPR Safety Limit values using conservative NRC-approved methods and the operability of plant systems designed to mitigate the consequences of accidents not being changed, the proposed change to the MCPR Safety Limit values and to the list in Specification 5.6.5.b of analytical methods approved for determining core operating limits does not significantly increase the consequences of a previously evaluated accident.

2. The proposed license amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Creation of the possibility of a new or different kind of accident would require the creation of one or more new precursors of that accident. New accident precursors may be created by modifications of the plant configuration, including changes in allowable modes of operation. This proposed license amendment does not involve any physical alteration of plant systems and plant equipment will not be operated in a different manner. As a result, no new failure modes are being introduced. Therefore, the proposed change to the MCPR Safety Limit values and to the list in Specification 5.6.5.b of analytical methods approved for determining core operating limits will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendments do not involve a significant reduction in a margin of safety.

The margin of safety is established through the design of the plant structures, systems, and components; through the parameters within which the plant is operated; through the establishment of setpoints for actuation of equipment relied upon to respond to an event; and through margins contained within the safety analyses.

The proposed change to the MCPR Safety Limit values and the list in Specification 5.6.5.b of analytical methods approved for determining core operating limits does not adversely impact the performance of plant structures, systems, components, and setpoints relied upon to respond to mitigate an accident. As previously stated, the methods for calculating the MCPR Safety Limit values have been previously approved by the NRC and are described in GE's reload licensing methodology topical report NEDE–24011–P–A. Use of these methods ensures that the resulting MCPR Safety Limit values satisfy the fuel design safety criteria that less than 0.1 percent of the fuel rods experience boiling transition if the safety limits are not violated. As a result, the proposed changes do not significantly impact any safety analysis assumptions or results. Based on the assurance that the fuel design safety criteria will be met, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Richard P. Correia.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: November 19, 1999.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) for the Harris Nuclear Plant (HNP) to incorporate American Society for Testing and Materials (ASTM) D3803–1989, ''Standard Test Method for Nuclear-Grade Activated Carbon,'' as the standard for testing nuclear-grade activated charcoal. Specifically, TS 4.7.6 will be revised for the Control Room Emergency Filtration System, TS 4.7.7 will be revised for the Reactor Auxiliary Building Emergency Exhaust System, and TS 4.9.12 will be revised for the Fuel Handling Building Emergency Exhaust System. These changes are being proposed in accordance with NRC Generic Letter (GL) 99–02, ''Laboratory Testing Of Nuclear-Grade Activated Charcoal,'' dated June 3, 1999.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposed change to revise the standard to which activated charcoal samples are tested will ensure that testing is accurate and repeatable. This will help ensure that the Engineered Safety Feature (ESF) ventilation systems are capable of performing their safety function. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes incorporate ASTM D3803–1989 as the testing standard for nuclear-grade activated charcoal samples. This will ensure that testing is accurate and repeatable. Plant structures, systems, and components will not be operated in a different manner as a result of these proposed changes and no physical modifications to equipment are involved. Using the improved testing protocol does not have the potential for creating the possibility of a new or different type of accident from any previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed changes do not change the manner in which structures, systems or components are operated. Revising the standard to which activated charcoal samples are tested will ensure that testing is accurate and repeatable. This will help ensure that the ESF ventilation systems are capable of performing their safety function. Therefore, the proposed changes do not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Richard P. Correia.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: November 12, 1999.

Description of amendment request: The proposed change revises the pressure-temperature limits by revising

the heatup, cooldown and inservice test limitations for the Reactor Pressure Vessel to a maximum of 32 Effective Full Power Years.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The proposed changes do not modify the reactor coolant pressure boundary, do not make changes in operating pressure, materials or seismic loading. The proposed changes adjust the reference temperature for the limiting beltline material to account for radiation effects and provide the same level of protection as previously evaluated. The proposed changes do not adversely affect the integrity of the reactor coolant system (RCS) such that its function in the control of radiological consequences is affected. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not create the possibility of a new or different kind of accident previously evaluated for Quad Cities Nuclear Power Station. No new modes of operation are introduced by the proposed changes. The proposed changes will not create any failure mode not bounded by previously evaluated accidents. Use of the revised pressure-temperature (P–T) curves will continue to provide the same level of protection as was previously reviewed and approved.

Further, the proposed changes to the P–T curves do not affect any activities or equipment, and are not assumed in any safety analysis to initiate any accident sequence for Quad Cities Nuclear Power Station. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed changes reflect an update of the P–T curves to extend the Reactor Pressure Vessel (RPV) operating limit to 32 Effective Full Power Years (EFPY). The revised curves are based on the latest American Society of Mechanical Engineers (ASME) guidance and actual operational data for the units. This proposed changes are acceptable because the ASME guidance maintains the relative margin of safety commensurate with that which existed at the time that the ASME Section IX Appendix G was approved in 1974. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: November 16, 1999.

Description of amendment request: The proposed change modifies the surveillance requirements for Functional Unit 3 on Table 4.1.A–1 due to replacement of the Reactor Pressure Vessel Steam Dome pressure switches with analog trip units.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

During the upcoming refueling outages at Quad Cities Nuclear Power Station, Unit 1 and Unit 2, a design change will be implemented that upgrades the existing Reactor Vessel Steam Dome-High instrumentation from a pressure switch to an analog trip unit device. Analog trip units are proven technology that are more reliable than existing equipment. Analog trip units are used in various applications of Quad Cities Nuclear Power Station, including the Reactor Protection System (RPS) low water level trip function.

The proposed change adds a CHANNEL CHECK and 31-day trip unit calibration requirement for the Reactor Vessel Steam Dome Pressure—High RPS trip function. This requirement is not applicable to the existing instrumentation because the Barksdale pressure switches are non-indicating and do not employ trip units.

Technical Specification (TS) requirements that govern operability or routine testing of plant instruments are not assumed to be initiators of any analyzed event because these instruments are intended to prevent, detect, or mitigate accidents. Therefore, these changes will not involve an increase in the probability of occurrence of an accident previously evaluated. Additionally, these changes will not increase the consequences of an accident previously evaluated because the proposed change does not adversely impact structures, systems, or components (SSCs). The planned instrument upgrade is a more reliable design than existing equipment. The proposed change establishes requirements that ensures components are operable when necessary for the prevention or mitigation of accidents or transients. Furthermore, there will be no change in the types or significant increase in the amounts of any effluents released offsite. For these reasons, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes support a planned instrumentation upgrade by incorporating Surveillance Requirements required to ensure operability. The change does not adversely impact the manner in which the instrument will operate under normal and abnormal operating conditions. Therefore, these changes provide an equivalent level of safety and will not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes in methods governing normal plant operation are consistent with the current safety analysis assumptions. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Does the change involve a significant reduction in a margin of safety?

The proposed change supports a planned instrumentation upgrade. The proposed change does not affect the probability of failure or availability of the affected instrumentation. The addition of a CHANNEL CHECK and 31-day trip unit calibration for RPS Functional Unit 3 (Reactor Vessel Steam Dome Pressure—High) is a conservative change that aligns the surveillance requirements for a planned instrumentation upgrade with that of similar instrumentation. Therefore, it is concluded that the proposed changes will not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Energy Northwest, Docket No. 50–397, WNP–2, Benton County, Washington

Date of amendment request: October 13, 1999.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.3.6.1, Table 3.3.6–1, ''Primary Containment

Isolation Instrumentation.'' This amendment requests that Function 5 on Table 3.3.6–1, ''RHR SDC System Isolation,'' be modified by removing footnote (d). Footnote (d) states, ''Only the inboard trip system is required in Modes 1, 2, and 3, as applicable, when the outboard valve control is transferred to the alternate remote shutdown panel and the outboard valve is closed.'' The outboard suction valve, RHR–V–8, is no longer used as a high/low pressure interface in the residual heat removal (RHR) system. Valve RHR–V–9, which is in series with valve RHR–V–8, is now used as the high/low pressure interface valve. Valve RHR–V–9 is operable in all modes of operation and therefore, footnote (d) is no longer needed. The current footnote (e) will be relettered as footnote (d) for consistency.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change involves the probability and consequences of accidents associated with the isolation of the RHR SDC [shutdown cooling] mode of RHR operation. Isolation is provided if high temperatures occur in RHR pump rooms or heat exchanger areas, if reactor vessel water level is low, or if reactor vessel pressure is high.

FSAR [Final Safety Analysis Report] Chapter 15, ''Accident Analysis,'' describes two events associated with the RHR system during SDC operation. FSAR Section 15.1.6, ''Inadvertent Residual Heat Removal Shutdown Cooling Operation,'' describes the impact of system operation during startup or cool-down when the reactor is near critical. The proposed change removes the exemption for the second trip system to isolate RHR SDC operation. There will be no change in the probability or consequences of this accident as a result of the proposed change.

The second accident is described in FSAR Section 15.2.9, ''Failure of Residual Heat Removal Shutdown Cooling.'' It postulates the failure of the RHR system to function in SDC mode. The evaluation assumes a failure of the SDC mode of operation but does not disable the remaining modes of RHR operation. The alternate SDC paths involve the use of the safety relief valves to establish a cooling flow path to the containment suppression pool. That evaluated accident does not result in any fuel failure. The proposed change will not result in an increase in the probability of fuel failures. The evaluated accident does result in normal coolant activity being released to the suppression pool through the safety relief valves. The proposed activity will not result in a change in the release of this coolant activity. The proposed change requires the removal of the exemption for the second trip system to isolate SDC and will have no impact on the probability or consequences of that accident.

Therefore, the operation of WNP–2 in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will not cause any new inadvertent SDC startup, loss of water inventory or loss of coolant accidents (LOCA). New or different inadvertent RHR SDC startup accidents are not possible because this change is only a further restriction on system operation. The LOCA during Mode 3 is bounded by the LOCA defined for Modes 1 and 2. No new primary system LOCA can be initiated because of this change.

Therefore, the operation of WNP–2 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The removal of an exemption for the second trip system, as proposed by this change, will increase the probability that leaks and high pressure will be isolated. Therefore, operation of WNP–2 in accordance with the proposed amendment will not decrease the margin of safety. Therefore, the operation of WNP–2 in accordance with the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas C. Poindexter, Esq., Winston & Strawn, 1400 L Street, NW, Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1 (RBS), West Feliciana Parish, Louisiana

Date of amendment request: October 25, 1999.

Description of amendment request: The proposed license amendment would revise the reactor pressure vessel (RPV) surveillance capsule withdrawal schedule for the River Bend Station. The first surveillance capsule would be withdrawn at 13.4 effective full power years (EFPY) rather than 10.4 EFPY.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Pressure-temperature (P/T) limits (RBS Technical Specifications Figure 3.4.11–1) are imposed on the reactor coolant system to ensure that adequate safety margins against nonductile or rapidly propagating failure exist during normal operation, anticipated operational occurrences, and system hydrostatic tests. The P/T limits are related to the nil-ductility reference temperature, RT_{NDT}, as described in ASME [American Society of Mechanical Engineers] Section III, Appendix G. Changes in the fracture toughness properties of RPV beltline materials, resulting from the neutron irradiation and the thermal environment, are monitored by a surveillance program in compliance with the requirements of 10 CFR [Part] 50, Appendix H. The effect of neutron fluence on the shift in the nil-ductility reference temperature of pressure vessel steel is predicted by methods given in RG [Regulatory Guide] 1.99, [Revision] 2.

River Bend's current P/T limits, as well as those for the planned increase in reactor thermal power (''Power Uprate''), were established based on adjusted reference temperatures developed in accordance with the procedures prescribed in RG 1.99, [Revision] 2, Regulatory Position 1. Calculation of adjusted reference temperature by these procedures includes a margin term to ensure conservative, upper-bound values are used for the calculation of the P/T limits. Revision of the first capsule withdrawal schedule will not affect the P/T limits because they will continue to be established in accordance with Regulatory Position 1 or other NRC [Nuclear Regulatory Commission]-approved procedures. When permitted (two or more credible surveillance data sets available), Regulatory Position 2 (or other NRC-approved) methods for determining adjusted reference temperature will be followed.

This change is not related to any accidents previously evaluated. The proposed change is a revision of the first surveillance capsule withdrawal time, identified in TRM [Technical Requirements Manual] Table 3.4.11–1, from 10.4 EFPY to 13.4 EFPY. This change will not affect P/T limits as given in RBS Technical Specifications Figure 3.4.11–1 or USAR Figures 5.3–4a and 5.3–4b. This change will not affect any plant safety limits or limiting conditions of operation. The proposed change will not affect reactor pressure vessel performance as no physical changes are involved and RBS vessel P/T limits will remain conservative in accordance with RG 1.99, [Revision] 2 requirements. The proposed change will not cause the reactor pressure vessel or interfacing systems to be operated outside of their design or testing limits. Also, the proposed change will not alter any assumptions previously made in evaluating the radiological consequences of accidents. Therefore, the probability or

consequences of accidents previously evaluated will not be increased by the proposed change.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change revises the first RPV material surveillance capsule withdrawal time in TRM Table 3.4.11–1 from 10.4 EFPY to 13.4 EFPY. This proposed change does not involve a modification of the design of plant structures, systems, or components. The proposed change will not impact the manner in which the plant is operated as plant operating and testing procedures will not be affected by the change. The proposed change will not degrade the reliability of structures, systems, or components important to safety (ITS) as equipment protection features will not be deleted or modified, equipment redundancy or independence will not be reduced, supporting system performance will not be downgraded, the frequency of operation of ITS equipment will not be increased, and increased or more severe testing of ITS equipment will not be imposed. No new accident types or failure modes will be introduced as a result of the proposed change. Therefore, the proposed change does not create the possibility of a new or different kind of accident from that previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

As stated in Section 5.3.2 of the River Bend Safety Evaluation Report (NUREG–0989), ''Appendices G and H of 10 CFR [Part] 50 describe the conditions that require pressure-temperature limits and provide the general bases for these limits. These appendices specifically require that pressure-temperature limits must provide safety margins at least as great as those commended in the ASME Code [American Society of Mechanical Engineers Boiler and Pressure Vessel Code], Section III, Appendix G. * * * Until the results from the reactor vessel surveillance program become available, the staff will use Regulatory Guide (RG) 1.99, Revision 1 [now Revision 2], to predict the amount of neutron irradiation damage.* * * The use of operating limits based on these criteria—as defined by applicable regulations, codes, and standards—will provide reasonable assurance that nonductile or rapidly propagating failure will not occur, and will constitute an acceptable basis for satisfying the applicable requirements of General Design Criteria (GDC) 31.''

Bases for RBS Technical Specification 3.4.11 states: ''The P/T limits are not derived from Design Basis Accident (DBA) analyses. They are prescribed during normal operation to avoid encountering pressure, temperature, and temperature rate of change conditions that might cause undetected flaws to propagate and cause nonductile failure of the RCPB [reactor coolant pressure boundary], a condition that is unanalyzed. * * * Since the P/T limits are not derived from any DBA, there are no acceptance limits related to the P/T limits. Rather, the P/T limits are acceptance limits themselves since they preclude operation in an unanalyzed condition.''

The proposed change will not affect any safety limits, limiting safety system settings, or limiting conditions of operation. The proposed change does not represent a change in initial conditions, or in a system response time, or in any other parameter affecting the course of an accident analysis supporting the Bases of any Technical Specification. The proposed change does not involve revision of the P/T limits but rather a revision of the withdrawal time for the first surveillance capsule. The current P/T limits (and proposed P/T limits for Power Uprate) were established based on adjusted reference temperatures for vessel beltline materials calculated in accordance with Regulatory Position 1 of RG 1.99, [Revision] 2. P/T limits will continue to be revised as necessary for changes in adjusted reference temperature due to changes in fluence according to Regulatory Position 1 until two or more credible surveillance data sets become available. When two or more credible surveillance data sets become available, P/T limits will be revised as prescribed by Regulatory Position 2 of RG 1.99, [Revision] 2, or other NRC-approved guidance. Therefore, the proposed changes do not involve a significant reduction in any margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Robert A. Gramm.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: October 29, 1999.

Description of amendment request: The proposed license amendment would change the River Bend Station (RBS) Updated Safety Analysis Report (USAR), Sections 6.2 and 15.6, to incorporate a revision to the calculation of radiological doses following a loss-of-coolant-accident (LOCA). The LOCA dose calculation was revised as a result of (1) an increase in the calculated positive pressure period (PPP) to account for a new phenomenon identified in Information Notice (IN) 88–76, (2) a more conservative Suppression Pool water volume value, (3) an additional and more conservative liquid leakage term identified in IN 91–56, and (4) changes to the engineered safety features (ESF) systems liquid leakage term.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not significantly increase the probability or consequences of an accident previously evaluated.

The analysis changes described by this proposed change to the USAR are not initiators to events, and therefore do not involve the probability of an accident. These modifications reflect a revision to the post-LOCA dose calculation. USAR Section 15.6.5.1.1 states that ''There are no realistic, identifiable events which would result in a pipe break inside of containment of the magnitude required to cause an accident LOCA * * * However, since such an accident provides an upper limit estimate to the resultant effects for this category of pipe breaks, it is evaluated without the causes being identified.'' The analysis itself does not identify an initiator, nor is it the initiator, of a LOCA. There was no physical change to the plant. The increase to the positive pressure period (PPP) was the result of inclusion of phenomena not previously included in the analysis documented in the SAR [safety analysis report], and does not have any impact on accident probability. The inclusion of an NRC [Nuclear Regulatory Commission] Information Notice (IN) 91–56 unfiltered liquid leakage term is voluntary and conservative in nature and does not represent an additional failure that could be construed as an initiator to the event. Therefore, this change does not increase the probability of occurrence of an accident evaluated previously in the safety analysis report (SAR).

This proposed change to the USAR does increase the consequences of an accident, but the increase is not significant. While the calculated off-site and control room doses of a LOCA did increase in Revision 1 to the post-LOCA dose calculation (reference 1) [of Attachment 1 to the License Amendment request, dated October 29, 1999], the dose consequences remain below the regulatory limits of 10 CFR [Part] 100 and 10 CFR [Part] 50, Appendix A, General Design Criteria (GDC) 19 as approved per NUREG–0989 and License Amendment 98. This change first accounts for the potential effect that differential temperature has on the PPP assumed in the off-site dose analysis. It also conservatively includes an additional liquid leakage term to account for concerns documented in NRC IN 91–56. Neither of these changes has an appreciable effect on vital area access doses. Vital area access dose calculations were not revised since they still conservatively reflect the expected doses discussed in USAR Section 12.3.2.4. There is no impact on equipment qualification associated with the proposed change since other gross conservatisms exist in those calculations (e.g., not crediting suppression pool scrubbing) compared to the post-LOCA dose calculations. Reanalysis of the off-site dose calculation demonstrates that the revised doses are increased only slightly and remain significantly less than the regulatory

limits. With the IN 91–56 term excluded, the increases are within the criteria of less than 10 [percent] of the remaining margin, which is the criteria to be applied in the revised 10 CFR 50.59 rule for minimal increases in consequences. With the IN 91–56 term included, only the 30 day LPZ [low-population zone] thyroid dose exceeds the ''minimal increase'' criterion. Note the doses documented in Table 1 [of Attachment 1 to the License Amendment request, dated October 29, 1999], above, are less than the values which had been documented in the SAR prior to the implementation and NRC approval of TS [Technical Specifications] Amendment 98. Therefore, this change does not significantly increase the consequences of an accident previously evaluated in the SAR.

2. The proposed changes would not create the possibility of a new or different kind of accident from any [previously] analyzed.

This change does not represent a physical change to the plant. It does not involve initiators to any events in the SAR, nor does the activity create the possibility for any new accidents. Rather, this change is a result of the evaluation of the most limiting LOCA which can occur at River Bend. Therefore, this change involves no new system interactions and does not create the possibility of an accident of a different type than those presently evaluated in the SAR.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The off-site dose consequences are calculated in accordance with regulatory guidance found in Regulatory Guide 1.3 and the SRP [Standard Review Plan], consistent with the analyses submitted to and approved by the NRC in support of Technical Specification Amendment 98. It is conservatively assumed that 100 [percent] fuel failure occurs instantaneously upon a recirculation pipe break, thus 2 of the 3 fission product barriers are immediately eliminated. These assumptions are made without any causes for the failures being identified. Containment is assumed to leak at its maximum allowable leakage rate (0.26 [percent] per day) for the duration of the event. Other leakage terms, such as engineered safety feature (ESF) leakage, are assumed to be equal to the Technical Specification limit. Since assumptions are made in accordance with Technical Specification allowable values and regulatory guidance, this change does not reduce the margin of safety as defined in the basis for any RBS Technical Specification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Robert A. Gramm.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 29, 1998, as supplemented by letters dated July 29, October 28, and November 11, 1999.

Description of amendment request: The amendment will revise Technical Specification 6.9.1.11.1 by replacing the existing reference to the Asea Brown Boveri-Combustion Engineering, Inc. (ABB CE), small break loss-of-coolant (SBLOCA) accident emergency core cooling system (ECCS) performance evaluation model with the revised model described in the topical report CENPD–137, Supplement 2, P–A, April 1998.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The SBLOCA ECCS performance evaluation is conducted to demonstrate conformance of light water nuclear power reactors to the ECCS acceptance criteria of 10 CFR 50.46. The proposed change is associated with an analysis performed using the new Supplement 2 version of the ABB CE SBLOCA Model (S2M). The primary objective of the analysis using the new model was to determine the impact of a reduction in High Pressure Safety Injection (HPSI) pump flow rate due to increased surveillance test measurement uncertainty. NRC approval of the new S2M model for use in licensing applications of CE design pressurized water reactors was obtained on December 16, 1997 (Reference 1) [of license amendment request dated July 29, 1998].

A comparison of the Waterford 3 results for the limiting SBLOCA scenario using the new S2M model against the criteria of 10 CFR 50.46(b) is summarized below:

Parameter	Result	Criterion
Peak Cladding Temperature	1929°F	2200°F
Maximum Cladding Oxidation	8.09%	17%
Core-wide Cladding Oxidation	<0.58%	1%
Coolable Geometry Maintained	Yes	Yes

These results remain within the criteria of 10 CFR 50.46. Thus, application of the new S2M model to the ECCS at Waterford will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different type of accident from any accident previously evaluated?

Response: No.

The proposed change will not create any new system connections or interactions. Thus, no new modes of failure are introduced. The revised methods used in the new SBLOCA evaluation model and their impact has been reviewed and approved by the NRC (Reference 1) [of license amendment request dated July 29, 1998]. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not alter the ability of the ECCS to maintain compliance with 10 CFR 50.46 criteria. The revised methods used in the new SBLOCA evaluation model and their impact has been reviewed and approved by the NRC (Reference 1) [of license amendment request dated July 29, 1998]. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N.S. Reynolds, Esquire, Winston & Strawn, 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: September 7, 1999.

Description of amendment request: The proposed amendment would change Technical Specification (TS) Section 3/4.3.2.1, ''Safety Features

Actuation System Instrumentation,'' Table 3.3–4, ''Safety Features Actuation System Instrumentation Trip Setpoints,'' to remove the ''Trip Setpoint'' values and modify the ''Allowable Values'' for Containment Pressure-High and Containment Pressure-High-High, and would change TS 3/4.3.2, ''Reactor Protection System and Safety System Instrumentation,'' to reflect the above change.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

The Davis-Besse Nuclear Power Station (DBNPS) has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit No. 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because the proposed changes do not change any accident initiator, initiating condition, or assumption.

The proposed changes would revise Technical Specification (TS) Table 3.3–4, Safety Features Actuation System Instrumentation Trip Setpoints, to administratively remove from TS the ''Trip Setpoint'' values for Instrument String Functional Unit ''b'', Containment Pressure—High, and Functional Unit ''c'', Containment Pressure—High-High, and also modify the TS ''Allowable Values'' entry for these same Functional Units, consistent with updated calculations using current setpoint methodology. The Trip Setpoint values removed from TS will be maintained in DBNPS-controlled documents. The proposed changes to Limiting Condition for Operation (LCO) 3.3.2.1 and Bases 3/4.3.1 and 3/4.3.2 are associated with these changes.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed changes do not invalidate assumptions used in evaluating the radiological consequences of an accident, do not alter the source term or containment isolation, and do not provide a new radiation release path or alter radiological consequences.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not introduce a new or different accident initiator or introduce a new or different equipment failure mode or mechanism.

3. Not involve a significant reduction in a margin of safety because the proposed changes establish an error analysis that has been shown to adequately preserve the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: November 2, 1999.

Description of amendment request: The proposed amendment would: (1) relocate the Boric Acid Addition Tank System (BAAS) and Borated Water Storage Tank requirements of Technical Specification (TS) 3/4.1.2.8, Reactivity Control Systems—Borated Water Sources—Shutdown, in their entirety to the Davis-Besse Nuclear Power Station Updated Safety Analysis Report (USAR) Technical Requirements Manual (TRM); (2) relocate the BAAS requirements of TS 3/4.1.2.9, Reactivity Control Systems—Borated Water Sources—Operating, to the USAR TRM, except for portions applicable to the BWST which are proposed to be deleted because they are redundant to the existing provisions of TS 3/4.5.4, Emergency Core Cooling Systems—Borated Water Storage Tank; (3) modify TS 3/4.1.2.1, Reactivity Control Systems—Borated Water Sources—Shutdown, by deleting references to TS 3.1.2.8; (4) incorporate corresponding changes to the TS index; and (5) incorporate corresponding changes to the TS Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no change is being made to any accident initiator. No previously analyzed accident scenario is changed, and initiating conditions remain as previously analyzed.

The proposed changes would relocate the Boric Acid Addition System (BAAS) and Borated Water Storage Tank (BWST) requirements of Technical Specification (TS) 3/4.1.2.8 in their entirety to the Davis-Besse Nuclear Power Station (DBNPS) Updated Safety Analysis Report (USAR) Technical Requirements Manual (TRM). The proposed changes would also relocate the BAAS requirements of TS 3/4.1.2.9 to the USAR TRM. The portions of TS 3/4.1.2.9 applicable to the BWST are proposed to be deleted because they are completely redundant to the existing provisions of TS 3/4.5.4, Emergency Core Cooling Systems—Borated Water Storage Tank. Associated with these changes, TS 3/4.1.2.1 is proposed to be revised to delete references to TS 3.1.2.8. The appropriate changes to the TS Index are also proposed, as well as changes to TS Bases 3/4.1.2. The proposed changes are also consistent with the improved ''Standard Technical Specifications—Babcock and Wilcox Plants,'' NUREG–1430, Revision 1.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed changes do not affect accident conditions or assumptions used in evaluating the radiological consequences of an accident. The proposed changes do not alter the source term, containment isolation or allowable radiological releases.

The chemical addition system, which includes the BAAS, is not credited for mitigation of any USAR Chapter 6 or Chapter 15 accidents. The BWST is credited for mitigation of USAR Chapter 6 and Chapter 15 accidents, as part of the Emergency Core Cooling System (ECCS). However, the BWST's requirements concerning ECCS are provided in separate TS 3/4.5.4, that is not proposed for change.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not change the way the plant is operated, and no new or different failure modes have been defined for any plant system or component important to safety. No new or different types of failures or accident initiators are introduced by the proposed changes.

3. Not involve a significant reduction in a margin of safety because the proposed changes are administrative in nature, consisting of deletion and/or relocation of certain TS requirements into licensee-controlled documents, and have no bearing on the margin of safety which exists in the present TS or USAR.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: November 2, 1999.

Description of amendment request: The proposed amendment would: (1) modify Technical Specification (TS) 3/4.3.2.1, Safety Features Actuation System Instrumentation, Table 3.3–4, Safety Features Actuation System Instrumentation Trip Setpoints, to remove ''Trip Setpoint'' values for Instrument String Functional Unit ''f,'' Borated Water Storage Tank (BWST) Level; (2) modify TS 3/4.3.2.1, Table 3.3–4, Functional Unit ''f,'' Allowable Values, to make it consistent with updated calculations using current setpoint methodology; (3) modify Limiting Condition for Operation (LCO) 3.3.2.1, Safety Features Actuation System Instrumentation to reflect removal of the ''Trip Setpoint'' for this Functional Unit; (4) change the footnote associated with TS 3/4.3.2.1, Table 3.3–4, Functional Unit ''f,'' Allowable Values, to indicate that the Allowable Values apply to the Channel Functional Test and no longer applies to the Channel Calibration; (5) modify TS 3/4.1.2.9, Reactivity Control Systems—Borated Water Sources—Operating, and TS 3/4.5.4, Emergency Core Cooling Systems—Borated Water Storage Tank, to increase the minimum BWST water level; and (6) make corresponding changes to TS Bases 3/4.1.2, Boration Systems, 3/4.3.1 and 3/4.3.2, Reactor Protection System and Safety System Instrumentation, and 3/4.5.4, Borated Water Storage Tank.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because the proposed changes do not change any accident initiator, initiating condition, or assumption.

The proposed changes would revise Technical Specification (TS) Table 3.3.4, Safety Features Actuation System Instrumentation Trip Setpoints, to administratively remove from the TS the ''Trip Setpoint'' values for Instrument String Functional Unit ''f,'' Borated Water Storage Tank (BWST) Level, and also modify the TS ''Allowable values entry for this same Functional Unit, consistent with updated calculations using current setpoint methodology. The Trip Setpoint values removed from the TS will be maintained in Davis-Besse Nuclear Power Station (DBNPS)-controlled documents. The proposed changes to Limiting Condition for Operation (LCO) 3.3.2.1 and Bases 3/4.3.1 and 3/4.3.2 are associated with these changes.

Associated with the above changes, TS 3/4.1.2.9 and TS 3/4.5.4 are proposed to be revised to increase the minimum available BWST borated water volume requirement as specified in LCO 3.1.2.9.b.1 and LCO 3.5.4.a. The proposed changes to Bases 3/4.1.2 and Bases 3/4.5.4 are associated with these changes. These changes are consistent with the revised setpoint analyses.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed changes do not invalidate assumptions used in evaluating the radiological consequences of an accident, do not alter the source term or containment isolation, and do not provide a new radiation release path.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not introduce a new or different accident initiator or introduce a new or different equipment failure mode or mechanism.

3. Not involve a significant reduction in a margin of safety because the proposed changes establish an error analysis that has been shown to adequately preserve the margin of safety, and the trip setpoint values removed from the TS will be maintained in the DBNPS Updated Safety Analysis Report, with proposed changes subject to the regulatory requirements of 10 CFR 50.59.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: November 8, 1999.

Description of amendment request: The proposed amendment would relocate Technical Specification (TS) 6.5.1, Station Review Board, and TS 6.5.2, Company Nuclear Review Board, to Davis-Besse Updated Safety Analysis Report Chapter 17.2, Quality Assurance During the Operations Phase, also known as the Quality Assurance Program. The proposed changes are consistent with the recommendations in NRC Administrative Letter 95–06, ''Relocation of Technical Specification Administrative Controls Related to Quality Assurance.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident initiators, conditions or assumptions are affected by the proposed changes to Section 6.0, Administrative Controls, of the Technical Specifications (TS).

The proposed changes to relocate the detailed listings of TS Section 6.5.1, Station Review Board (SRB), and TS 6.5.2, Company Nuclear Review Board (CNRB), to the Davis-Besse Nuclear Power Station (DBNPS) Quality Assurance Program in Chapter 17 of the Updated Safety Analysis Report are consistent with the NRC's guidance in NUREG–1430, ''Standard Technical Specifications—Babcock and Wilcox Plants,'' Revision 1 and NRC Administrative Letter 95–06, ''Relocation of Technical Specification Administrative Controls Related to Quality Assurance,'' dated December 12, 1995. These TS being relocated will remain subject to the controls of other NRC regulations (e.g., 10 CFR 50.54(a)). The proposed changes to the TS Index reflect the relocation of TS 6.5.1 and TS 6.5.2. These are administrative changes that do not reduce the duties or responsibilities of the SRB and CNRB in ensuring the safe operation of the DBNPS.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because no accident conditions or assumptions are affected by the proposed changes. As described above, these changes are consistent with the improved ''Standard Technical Specifications—Babcock and Wilcox Plants'' (NUREG–1430 Revision 1) and Administrative Letter 95-06, and are administrative changes. The proposed changes do not alter the source term, containment isolation, or allowable releases. The proposed changes, therefore, will not increase the radiological consequences of a previously evaluated accident.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because no new accident initiators or assumptions are introduced by the proposed changes, which involve the administrative location for listing SRB and CNRB responsibilities. The proposed changes do not alter any accident scenarios.

3. Not involve a significant reduction in a margin of safety because the proposed changes are administrative and do not reduce or adversely affect the capabilities of any plant structures, systems or components to perform their nuclear safety functions.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: November 1, 1999

Description of amendment request: The proposed license amendment is prescribed by the requested actions of Generic Letter 99–02, ''Laboratory Testing of Nuclear-Grade Activated Charcoal.'' The proposed amendment will modify the existing Ventilation Filter Testing Program contained in Technical Specification 5.5.7.c by replacing the reference to ASTM D3803–1986, the standard for charcoal filter testing for ESF ventilation systems, with ASTM D3803–1989. The proposed amendment will also incorporate the suggested safety factor for charcoal filter efficiency regarding methyl iodide penetration.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to reference American Society for Testing and Materials (ASTM) D3803–1989, ''Standard Test Method for Nuclear-Grade Activated Carbon,'' for laboratory testing of Engineered Safety Features (ESF) ventilation systems in lieu of ASTM D3803–1986 is prescribed by the requested actions of Generic Letter (GL) 99–02, ''Laboratory Testing of Nuclear-Grade Activated Charcoal.'' The use of ASTM D3803–1989 allows for increased accuracy in monitoring the degradation of ESF ventilation system activated carbon (charcoal) over time and is a reproducible method for determining the realistic capability of charcoal. The 1989 standard is endorsed by the NRC and is considered to be more stringent regarding testing criteria than the previous referenced standard (1986). GL 99–02 encourages addressees, if necessary, to amend their Technical Specifications (TS) to reference ASTM D3803–1989 for charcoal filter laboratory testing for ESF ventilation systems. In response to the referenced GL, the proposed change modifies the existing Perry Nuclear Power Plant (PNPP) Ventilation Filter Testing Program (VFTP) contained in the PNPP TS to reference ASTM D3803–1989 as the standard for charcoal filter laboratory testing for ESF ventilation systems. In addition, the proposed change incorporates the safety factor suggested within GL 99–02 for charcoal filter efficiency with respect to methyl iodide penetration. The proposed change provides assurance for compliance with the current licensing basis regarding dose limits of General Design Criteria (GDC) 19 of Appendix A to 10 CFR 50 and 10 CFR 100. The proposed change ensures originally stated design criteria are met and therefore does not affect the precursors for accidents or transients analyzed in Chapter 15 of the PNPP Updated Safety Analysis Report (USAR). With the proposed change, the radiological consequences are the same as previously stated in the USAR. Therefore, the implementation of the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to reference ASTM D3803–1989 for the laboratory testing of charcoal filters of ESF ventilation systems in lieu of ASTM D3803–1986 is prescribed by the requested actions of GL 99–02. ASTM D3803–1989 is endorsed by the NRC and is considered a more stringent testing standard than the previous referenced standard, ASTM D3803–1986. In addition, the proposed change incorporates the safety factor suggested within GL 99–02 for charcoal filter efficiency with respect to methyl iodide penetration. The proposed change provides assurance for compliance with the current licensing basis regarding dose limits of GDC 19 of Appendix A to 10 CFR 50 and 10 CFR 100. The proposed change does not change the assumptions used in any accident analysis and no new or different kind of accident is created. The proposed change ensures originally stated design criteria are met and therefore does not affect the precursors for accidents or transients analyzed in Chapter 15 of the PNPP USAR. Therefore, the implementation of the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change is prescribed by the requested actions of GL 99–02. The use of ASTM D3803–1989 allows for increased accuracy in monitoring the degradation of ESF ventilation systems charcoal over time and is a very accurate and reproducible method for determining the realistic capability of charcoal. ASTM D3803–1989 is considered a more stringent testing standard than the previous referenced standard, ASTM D3803–1986. Additionally, as specified in GL 99–02, a safety factor of 2 has been utilized in the calculation of the revised allowable penetration based upon the credited efficiency approved by the NRC. The proposed change provides assurance for compliance with the current licensing basis regarding dose limits of GDC 19 of Appendix A to 10 CFR 50 and 10 CFR 100. Therefore, the implementation of the proposed change does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: November 1, 1999

Description of amendment request: Technical Specification Surveillance Requirement (SR) 3.6.1.7.4 requires that each containment spray nozzle be verified unobstructed on a 10-year frequency. The proposed amendment would revise the frequency for SR 3.6.1.7.4 from once every 10 years to only those conditions when maintenance is performed which could result in nozzle blockage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change revises the surveillance frequency from every 10 years to following maintenance that could result in nozzle blockage. Analyzed events are initiated by the failure of plant structures, systems or components. The containment spray system is not considered as an initiator of any analyzed event. The proposed change does not have a detrimental impact on the integrity of any plant structure, system or component that initiates an analyzed event. The proposed change will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident. As a result, the probability of any accident previously evaluated, is not significantly increased.

The proposed change revises the Surveillance Frequency. Reduced testing is acceptable where operating experience has shown that these components usually pass the Surveillance when performed at the specified interval, thus the frequency is acceptable from a reliability standpoint. The proposed containment spray nozzle Surveillance Frequency has been established based on achieving acceptable levels of equipment

reliability. This change does not affect the plant design. Due to the plant design, the spray header is maintained dry and alarmed on water intrusion. Formation of significant corrosion products is unlikely. Due to its location at the top of the containment, introduction of foreign material from exterior to the header is unlikely. Since maintenance that could introduce foreign material is the most likely cause for obstruction, testing or inspection following such maintenance would verify the nozzle(s) being unobstructed, and the system would be capable of performing its safety function. As a result, the consequences of any accident previously evaluated are not significantly affected.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change would not create the possibility of a new of different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change would not involve a significant reduction in a margin of safety.

The margin of safety for this system is based on the capacity of the spray headers. Since the system is not susceptible to corrosion induced obstruction or obstruction from external to the system, and performance of maintenance on the system would require evaluation of the potential for nozzle blockage and the need for a test or inspection, the spray header nozzles will not become blocked in the event that the safety function is required. Therefore, the capacity of the system would remain unaffected. Hence, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: November 17, 1999.

Description of amendment request: The proposed amendments for St. Lucie, Units 1 and 2, will revise the current 72-hour action completion allowed outage time (AOT) specified in Technical Specification (TS) 3.8.1.1, Action ''b,'' to allow 14 days to restore an inoperable emergency diesel generator set to operable status. The proposed AOT is based on an integrated review and assessment of plant operations, deterministic design basis factors, and an evaluation of overall plant risk using probabilistic safety assessment techniques.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments for St. Lucie Unit 1 and Unit 2 will extend the action completion/allowed outage time (AOT) for a single inoperable Emergency Diesel Generator (EDG) from 72 hours to 14 days. The EDGs are designed as backup AC power sources for essential safety systems in the event of a loss of offsite power. As such, the EDGs are not accident initiators, and an extended AOT to restore operability of an inoperable diesel generator would not significantly increase the probability of occurrence of accidents previously analyzed.

The proposed technical specification revisions involve the AOT for a single inoperable EDG, and do not change the conditions, operating configuration, or minimum amount of operating equipment assumed in the plant safety analyses for accident mitigation. Plant defense-in-depth capabilities will be maintained with the proposed AOT, and the design basis for electric power systems will continue to conform with 10 CFR 50, Appendix A, General Design Criterion 17. In addition, a Probability Safety Assessment (PSA) was performed to quantitatively assess the risk-impact of the proposed amendment for each unit. The impact on the early radiological release probability for design basis events was also evaluated and it is concluded that the risk contribution from this proposed AOT is small and consistent with regulatory risk-assessment acceptance guidelines. Therefore, operation of either facility in accordance with its proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendments will not change the physical plant or the modes of operation defined in either facility license. The changes do not involve the addition of new equipment or the modification of existing equipment, nor do they alter the design of St. Lucie plant systems. Therefore, operation of either facility in accordance with its proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed amendments are designed to improve EDG reliability by providing flexibility in the scheduling and performance of preventive and corrective maintenance activities. The surveillance intervals or the operability requirements are not changed by the proposal; only the AOT for a single inoperable EDG will be extended. The proposed changes do not alter the basis for any technical specification that is related to the establishment of, or the maintenance of, a nuclear safety margin, and design defense-in-depth capabilities are maintained. An integrated assessment of the risk impact of extending the AOT for a single inoperable EDG has determined that the risk contribution is small and is within regulatory guidelines for an acceptable TS change. Therefore, operation of either facility in accordance with its proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Richard P. Correia.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Dade County, Florida

Date of amendment request: November 23, 1999.

Description of amendment request: The proposed license amendments are submitted in response to Generic Letter (GL) 99–02, Laboratory Testing of Nuclear-Grade Activated Charcoal, which requires that American Society for Testing and Materials (ASTM) D3803–1989 be used for testing both new and used charcoal in engineered safety feature applications. The proposed amendments would modify Technical Specification (TS) 3/4.6.3, EMERGENCY CONTAINMENT FILTERING SYSTEM, TS 3/4.6.6, POST ACCIDENT CONTAINMENT VENT SYSTEM, and TS 3/4.7.5, CONTROL ROOM EMERGENCY VENTILATION SYSTEM.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of occurrence of an accident previously evaluated for Turkey Point is not altered by the proposed TS changes because no physical modifications are being made to the plant.

The proposed change requires that new and used charcoal in the plant engineered safety feature (ESF) ventilation systems be tested in accordance with ASTM D3803–1989, at a temperature of 30 °C and a relative humidity of 95%. The use of a new or different test standard to satisfy the charcoal surveillance test requirement does not change the radiological consequences of any previously evaluated accident. The adoption of the ASTM standard will, however, require that future charcoal samples from the emergency containment filters be tested for methyl iodide removal rather than elemental iodine removal as permitted by previous test protocols. The revised test method will provide a more uniform test program for the ESF filters, and will not adversely affect the filters affinity for elemental iodine removal. The adoption of the ASTM standard for laboratory analysis of the ESF charcoal does not impact the design bases of the ESF systems, alter post-accident source terms, or modify the removal efficiencies credited in the facility dose calculations.

The ASTM standard is very stringent and has been shown to provide a more reliable measure of the ability of charcoal to fulfill its intended design function, i.e., to remove radioiodine in any chemical form from the attendant plant gas stream, than previous test protocols. Consequently, the adoption of the ASTM standard for laboratory analysis of the ESF charcoal will ensure that Turkey Point is operated in a manner consistent with the licensing basis of the facility as it relates to the protection of the public and the control room operators during radiological accidents.

Based on the above, it is concluded that the proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not create a new or different type of accident for Turkey Point because no physical plant changes are being made, and no compensatory measures are imposed that would create a new failure scenario. The proposed change only imposes a more stringent surveillance requirement for both new and used charcoal in the plant ESF ventilation systems. Since no new failure modes are associated with the proposed changes, the activity does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed license amendment adopts a more stringent standard for performing laboratory surveillance tests on both new and used charcoal in the ESF ventilation systems. Given the increased accuracy of the proposed test standard, the amendment also supports the adoption of revised acceptance criteria having a lower safety factor to the plant safety analysis limits. The composite change does not impact the design bases of the ESF systems, alter post-accident source terms, or modify the removal efficiencies credited in the facility dose calculations

The margin of safety associated with operation of the ESF ventilation systems is established by the facility dose calculations and the acceptance criteria for system performance defined in 10 CFR 100 and Criterion 19 of Appendix A to 10 CFR 50. The proposed amendments will not change this acceptance criteria nor the calculated dose limits used to establish the current plant-licensing basis.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Richard P. Corriea.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: October 12, 1999.

Brief description of amendment: The proposed amendment would revise the Appendix B Environmental Protection Plan of the Crystal River Unit 3 (CR–3) Operating License. The changes incorporate requirements from a biological opinion (BO) issued by the National Marine Fisheries Service (NMFS). The BO reviews the effects of the cooling water intake system on species of sea turtles protected by the Endangered Species Act (ESA). Additionally, other administrative changes are proposed to Appendix B.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

1. Involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes to the CR–3 EPP are administrative in nature and reflect the information provided in the NMFS BO. These changes do not affect the initial conditions, assumptions, or conclusions of the CR–3 accident analyses. In addition, the proposed changes do not affect the operation or performance of any equipment assumed in the accident analyses. Therefore, the proposed changes would not significantly increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from previously evaluated accidents?

The proposed changes are administrative in nature and reflect information provided by the NMFS BO regarding the incidental taking of species of sea turtles protected by the ESA. These changes do not impact or alter the configuration or operation of the facilities and do not create any new modes of operation. Therefore, the proposed changes would not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in a margin of safety?

As indicated above, the proposed changes do not change the configuration or operation of the plant and do not affect the CR–3 accident analyses. The proposed changes are administrative in nature and do not affect any margin of safety for CR–3. Therefore, the proposed changes would not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: R. Alexander Glenn, General Counsel (MAC–BT15A), Florida Power Corporation, P. O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Section Chief: Richard Correia.

GPU Nuclear, Inc., et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: October 29, 1999.

Description of amendment request: The proposed license amendment would modify the Technical Specifications (TSs) to: (1) Add operating limits for make-up tank (MUT) level and pressure in a new figure 3.3.1; (2) add surveillance requirements for the MUT pressure instrument channel; (3) change the frequency of calibration for the MUT level instrument from F (every 24 months) to R (refueling interval); (4) change the frequency of calibration for

the high pressure injection (HPI) and low pressure injection (LPI) flow instruments; and (5) make minor editorial changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not represent a significant increase in the probability or consequences of an accident previously evaluated.

The changes included in this LCA [License Change Application] impose new requirements for MU/HPI system operation and testing and extension of calibration frequencies for the MUT level, HPI flow and LPI flow instruments. These changes could not result in initiation of any accident previously evaluated. Therefore, the probability of an accident could not be affected by changes to the MU/HPI system.

As described in the list of benefits for operation with the MU/HPI cross-connect valves open, listed in Section III.B above [Section III.B of the October 29, 1999 application], the purpose of changing the operation of the MU/HPI system was to preclude the possibility of HPI pump damage. The addition of surveillance requirements for the MUT pressure instrument and the addition of LCO [limiting conditions for operation] limits on MUT level and pressure along with an appropriate action statement and AOT [allowed outage time] will ensure that gas entrainment of the MUT does not occur. The proposed change in instrument calibration frequencies will continue to maintain the required accuracy of the MUT level, HPI flow, and LPI flow instruments.

Minor editorial changes are included in this request to improve clarity and readability of the T.S. and could not adversely affect plant operation.

Therefore, the proposed changes will not adversely impact the reliability of the MU/HPI system and could not represent a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

This LCA does not involve the addition of any new hardware. Along with minor editorial changes, the requested changes involve MU/HPI system operation and testing, which could only affect RCS [reactor coolant system] coolant inventory changes during operation and the ability to provide protection in the event of a Loss of Coolant Accident (LOCA). The full spectrum of LOCAs has been evaluated in the FSAR [Final Safety Analysis Report]. Therefore, no new accident scenarios have been created.

The additional controls on MUT level and pressure provided by this LCA will ensure that a malfunction of a different type, gas entrainment of the MU/HPI pumps, will not occur. These limits on MUT level and pressure ensure that the initial conditions assumed for ECCS [emergency core cooling system] operation are maintained. The T.S. limits maintain the accident analysis initial conditions such that no operator action is required to meet NPSH [net positive suction head] or to avoid gas entrainment during ECCS operation with the postulated single failure as required by the TMI–1 licensing basis (Reference 14) [of the October 29, 1999, application].

Extension of the calibration frequencies for the HPI level, HPI flow, and LPI flow will continue to maintain the accuracy of these instruments and could not create the potential for any new accident that has not been evaluated.

Minor editorial changes are included in this request to improve the clarity and readability of the T.S. and could not adversely affect plant operation.

Therefore, these changes do not create the potential for any accident different from those that have been evaluated.

3. These proposed changes do not involve a significant reduction in a margin of safety.

This LCA includes changes to the MU/HPI system operation and testing and an extension of the calibration frequency for certain instrument[s]. The requested changes will serve to maintain the proper system initial conditions to ensure the ability of the MU/HPI system to provide protection in the event of a Loss of Coolant Accident (LOCA) and maintain the required instrument accuracy for the instruments where changes to a refueling interval frequency are being requested. NRC guidance for addressing the effect on increased surveillance intervals on instrument drift and safety analysis assumptions presented in GL [generic letter] 91–04 has been addressed in enclosure 1A above [of the October 29, 1999, application].

Minor editorial changes are included in this request to improve the clarity and readability of the T.S. and could not adversely affect plant operation.

These changes, which are consistent with the TMI–1 licensing and design basis requirements, do not result in a degradation of safety related equipment, and therefore, do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Sheri R. Peterson.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: November 17, 1999.

Description of amendment request: The proposed amendments would revise the Technical Specification (TS) values for methyl iodide penetration for the main control room environmental control system and the standby gas treatment system. Also, editorial revisions are being made to portions of TS Section 5.0 to reference the correct sections of Regulatory Guide 1.52.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or the consequences of a previously evaluated accident.

This proposed revision makes changes to Technical Specification (TS) Section 5.5.7, ''Ventilation Filter Testing Program'' (VFTP). The references to sections in the Regulatory Guide 1.52, Revision 2 for VFTP are being corrected. Additionally, the proposed revision also changes the allowable methyl iodide penetration percent for the carbon in the Standby Gas Treatment (SGT) and the Main Control Room Environmental Control (MCREC) systems when tested in accordance with ASTM DS3803–1989. This is based on the values that would be derived using a factor of safety of 2 between the credited and tested carbon efficiencies. This safety factor is contained in the Generic Letter 99–02. The Generic Letter allows the reduction of the factor of safety between the credited and tested carbon efficiencies from 5 (for systems with heaters) and 7 (for systems without heaters) to 2 (for systems with or without heaters) when tested per ASTM D–3803–1989. Since the factor of safety of 2 is maintained, this change does not involve a significant increase in the probability or the consequences of a previously evaluated event. The changes in the section references to Regulatory Guide 1.52 Revision 2 for the Ventilation Filter Testing Program (VFTP) are considered to be editorial corrections.

2. The change does not involve a significant increase in the probability of or the consequences of an event not previously analyzed.

This proposed revision makes changes to TS Section 5.5.7, ''Ventilation Filter Testing Program'' (VFTP). The section references to Regulatory Guide 1.52 Revision 2 for the Ventilation Filter Testing Program (VFTP) are being corrected. The change in the allowable methyl iodide penetration percent is based

on the values that would be derived using the safety factor of 2 contained in Generic Letter 99–02. The Generic Letter will reduce the factor of safety between the credited and tested carbon efficiencies from 5 (for systems with heaters) and 7 (for systems without heaters) to 2 if tested per ASTM D–3803–1989. Since the credited carbon efficiencies in the dose calculations are not being compromised, this change will not involve a significant increase in the probability of, or the consequences of an event not previously analyzed.

The changes in the section references to Reg. Guide 1.52 are editorial and thus do not significantly increase the probability of, or the consequences of a previously unanalyzed event.

3. The change does not significantly reduce the margin of safety.

The change in the allowable methyl iodide penetration percent implements the Generic Letter's carbon efficiency safety factor of 2 between the credited and the tested carbon efficiencies. Per the generic letter, it is acceptable to use this new safety factor since the new standard is more accurate and demanding than previous ones. Therefore, the proposed revision will not significantly reduce the margin of safety. The changes in the section references for Regulatory Guide 1.52 Revision 2 are considered to be editorial corrections.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Richard L. Emch, Jr.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: November 15, 1999 (TS 99–016).

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) for Watts Bar Unit 1 to: (1) revise the Watts Bar TS and associated TS Bases for TS 3.6.11.5 to change the methodology and frequency for sampling the ice condenser ice bed (stored ice) and (2) add a new TS 3.6.11.7 and associated TS Bases to address sampling requirements for all ice additions to the ice bed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The only analyzed accidents of possible consideration in regards to changes potentially affecting the ice condenser are a loss of coolant accident (LOCA) and a main steam line break (MSLB) inside containment. However, the ice condenser is not postulated as being the initiator of any LOCA or MSLB. This is because it is designed to remain functional following a design basis earthquake, and the ice condenser does not interconnect or interact with any systems that interconnect or interact with the reactor coolant or main steam systems. Since the proposed changes to the TS and TS Bases are solely to revise and provide clarification of the ice sampling and chemical analysis requirements, and are not the result of or require any physical change to the ice condenser, then there can be no change in the probability of an accident previously evaluated in the Safety Analysis Report (SAR).

In order for the consequences of any previously evaluated event to be changed, there would have to be a change in the ice condenser's physical operation during a LOCA or MSLB, or in the chemical composition of the stored ice. The proposed changes do not alter either from existing requirements, except to add an upper limit on boron concentration, which is the bounding value for the Hot Leg Switchover timing calculation. Though the frequency of the existing surveillance requirement for sampling the stored ice is changed from once every 18 months to once every 54 months, the sampling requirements are strengthened overall with (1) the requirement to obtain one randomly selected sample from each ice condenser bay (24 total samples) rather than nine ''representative'' samples, and (2) the addition of a new surveillance requirement to verify each addition of ice meets the existing requirements for boron concentration and pH value. The only other change is to clarify that each sample of stored ice is individually analyzed for boron concentration and pH, but that the acceptance criteria for each parameter is based on the average values obtained for the 24 samples. This is consistent with the bases for the boron concentration of the ice, which is to ensure the accident analysis assumptions for containment sump pH and boron concentration are not altered following complete melting of the ice condenser. Historically, chemical analysis of the stored ice has had a very limited number of instances where an individual sample did not meet the boron or pH requirements, with all subsequent evaluations (follow up sampling) showing the ice condenser as a whole was well within these requirements. Requiring chemical analysis of each sample is provided to preclude the practice of melting all samples together before performing the analysis, and to ensure the licensee is alerted to any localized anomalies for investigation and resolution without the burden of entering a 24 hour ACTION Condition, provided the averaged results are acceptable. Thus, based on the above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The Proposed Change Does Not Create The Possibility Of A New Or Different Kind Of Accident From Any Accident Previously Evaluated.

Because the TS and TS Bases changes do not involve any physical changes to the ice condenser, any physical or chemical changes to the ice contained therein, or make any changes in the operational or maintenance aspects of the ice condenser as required by the Tech Specs, there can be no new accidents created from those already identified and evaluated.

C. The Proposed Change Does Not Involve A Significant Reduction In A Margin Of Safety.

The ice condenser Technical Specifications ensure that during a LOCA or SLB the ice condenser will initially pass sufficient air and steam mass to preclude over pressurizing lower containment, that it will absorb sufficient heat energy initially and over a prescribed time period to assist in precluding containment vessel failure, and that it will not alter the bulk containment sump pH and boron concentration assumed in the accident analysis. Since the proposed changes do not physically alter the ice condenser, but rather only serve to strengthen and clarify ice sampling and analysis requirements, the only area of potential concern is the effect these changes could have on bulk containment sump pH and boron concentration following ice melt. However, this is not affected because there is no change in the existing requirements for pH and boron concentration, except to add an upper limit on boron concentration. This upper limit is the bounding value for the Hot Leg Switchover timing calculation. Averaging the pH and boron values obtained from analysis of the individual samples taken is not a new practice, just one that was not consistently used by all ice condenser plants. Using the averaged values provides an equivalent bulk value for the ice condenser, which is consistent with the accident analysis for the bulk pH and boron concentration of the containment sump following ice melt. Changing the performance frequency for sampling the stored ice does not reduce any margin of safety because (1) the newly proposed surveillance (SR 3.6.15.7) ensures ice additions meet the existing boron concentration and pH requirements, (2) there are no normal operating mechanisms, including sublimation, that reduce the ice condenser bulk pH and boron concentration, and (3) the number of required samples has been increased from nine to 24 (one randomly selected ice basket per bay), which is approximately the same number of samples that would have been taken in the same time period under the existing requirements. Thus, it can be concluded that the proposed TS and TS Bases changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Richard Correia.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: November 20, 1998 and July 19, 1999 (TS99–014).

Description of amendment request: The proposed amendment would revise the Watts Bar Nuclear plant Unit 1 Technical Specifications (TS) and associated TS Bases to alter the acceptance criteria in Surveillance Requirement (SR) 3.6.11.4 and to revise the Bases for TS 3.6.12. The changes would replace the current visual inspection requirement that uses a 0.38 inch ice/frost buildup criterion with a visual surveillance program that provides an increased confidence level that flow blockage in ice condenser baskets does not exceed the 15 percent assumed in the accident analyses. The proposed amendment dated July 19, 1999 is considered to supercede and replace entirely a proposed amendment dated November 20, 1998 on this same subject.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Neither the TS amendment nor the TS Bases changes can increase the probability of occurrence of any analyzed accident because they are not the result or cause of any physical modification to ice condenser structures, and for the current design of the ice condenser, there is no correlation between any credible failure of it and the initiation of any previously analyzed event.

Regarding the consequences of analyzed accidents, the ice condenser is an engineered safety feature designed, in part, to limit the containment subcompartment and steel containment vessel pressures immediately following the initiation of a LOCA [loss-of-coolant accident] or HELB [high energy line break]. Conservative subcompartment pressure analysis shows this criteria will be met if the reduction in the flow area per bay provided for ice condenser air/steam flow channels is less than or equal to 15 percent, or if the total flow area blocked within each lumped analysis section is less than or equal to the 15 percent assumed in the safety analysis. The present 0.38 inch frost/ice buildup surveillance criteria only addresses the acceptability of any given flow channel, and has no direct correlation between flow channels exceeding this criteria and percent of total flow channel blockage. In fact, it was never the intent of the current SR to make such a correlation. If problems were encountered in meeting the 0.38 inch criteria, it was expected that additional inspection and analysis, such as provided in the proposed amendment, would be performed to make such a determination.

Verifying an ice bed is left with less than or equal to 15 percent flow channel blockage at the conclusion of a refueling outage assures the ice bed will remain in an acceptable condition for the duration of the operating cycle. During the operating cycle, a certain amount of ice sublimates and reforms as frost on the colder surfaces in the Ice Condenser. However, frost does not degrade flow channel area. The surveillance will effectively demonstrate operability for an allowed 18 month surveillance period. Therefore, limiting ice bed flow channel blockage to less than or equal to 15 percent ensures operation is consistent with the assumptions of the design basis accident (DBA) analyses. Thus, the proposed amendment for flow blockage determination provides the necessary assurance that flow channel requirements are met without additional evaluations, and thus will not increase the consequences of a LOCA or HELB.

In regard to the TS 3.6.12 Bases change, clarifying that Condition B does not apply when personnel are standing on or opening doors for a short duration to perform surveillances or minor maintenance activities, such as ice removal, does not increase analyzed accident consequences. These are not new or additional actions to those performed previously, the probability of an accident versus the time to perform these actions is small, the number of personnel involved is small, and their duration is generally much less than the four hour frequency of Required Action B.1 (monitor maximum ice condenser temperature). Therefore, these activities do not adversely affect ice bed sublimation, melting, or ice condenser flow paths. However, if during these activities any door is determined to be restrained, not fully closed from a previous activity, or otherwise not operable, then separate entry into Condition B is required for each door so identified.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

For such a possibility to exist, there would have to be either a physical change to the ice condenser, or some change in how it is operated or physically maintained. None of the above is true for the proposed TS amendment and TS Bases change.

There is no change to the existing design requirements or inputs/results of any accident analysis calculations.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

Design Basis Accident analyses have shown that with 85 percent of the total flow area available (uniformly distributed), the ice condenser will perform its intended function. Thus, the safety limit for ice condenser operability is a maximum 15 percent blockage of flow channels. SR 3.6.11.4 currently uses a specific value of 0.38 inch buildup to determine if unacceptable frost/ice blockage exists in the ice condenser. However, this specific value does not have a direct correlation to the safety limit for blockage of ice condenser flow area. The proposed TS amendment requires more extensive visual inspection (33 percent of the flow area/bay) than is currently described (2 flow channels/bay) in the TS Bases for SR 3.6.11.4, thus providing greater reliability and a direct relationship to the analytical safety limits. Changing the TS to implement a surveillance program that is more reliable and uses acceptance criteria of less than or equal to 15 percent flow blockage, as allowed by the TMD [transient mass distribution] analysis, will not reduce the margin of safety of any TS.

Additionally, verifying an ice bed is left with less than or equal to 15 percent flow channel blockage at the conclusion of a refueling outage assures the ice bed will remain in an acceptable condition for the duration of the operating cycle. During the operating cycle, a certain amount of ice sublimates and reforms as frost on the colder surfaces in the Ice Condenser. However, frost has been determined to not degrade flow channel flow area. Thus, design limits for the continued safe function of containment subcompartment walls and the steel containment vessel are not exceeded due to this change.

The change made to TS 3.6.12 Bases does not affect the margin of safety as defined in any TS as it does not involve design specifications or acceptance criteria. This change only adds a clarifying note that entry into Condition B is not required solely because of actions (standing on and opening intermediate/upper deck doors) necessary for the performance of required ice condenser surveillances, maintenance, or routine activities. This does not preclude entry into Condition B during performance of these activities should an intermediate deck door or upper deck door otherwise be determined inoperable.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Richard P. Correia.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: November 8, 1999.

Description of amendment request: The amendment changed action statements, definitions, and footnotes pertaining to the Technical Specifications for primary containment leakage and primary containment purge system to allow an alternative approach to the existing requirement.

Date of publication of individual notice in **Federal Register**: November 16, 1999 (64 FR 62228).

Expiration date of individual notice: December 16, 1999.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

CBS Corporation, Docket No. 50–22, Westinghouse Test Reactor, Waltz Mill, Pennsylvania

Date of application for amendment: September 7, 1999, as supplemented on October 1, 1999.

Brief description of amendment: This amendment reassigns the responsibilities of the Site Manager, who works for the Westinghouse Electric Company (a contractor to CBS), to the TR–2 Decommissioning Project Director, who works for CBS.

Date of issuance: November 23, 1999.

Effective Date: November 23, 1999.

Amendment No: 10.

Facility License No. TR–2: This amendment changes the decommissioning plan.

Date of initial notice in **Federal Register**: October 20, 1999 (64 FR 56529).

The Commission has issued a Safety Evaluation for this amendment dated November 23, 1999.

No significant hazards consideration comments received: No.

Commonwealth Edison Company, Docket No. 50–254, Quad Cities Nuclear Power Station, Unit 1, Rock Island County, Illinois

Date of application for amendment: March 30, 1999.

Brief description of amendment: The amendment revises the Technical Specifications by changing Surveillance Requirement 4.6.E.2 to allow a one-time extension of the 18-month requirement to pressure set test or replace one half of the Main Steam Safety Valves to an interval of 24 months.

Date of issuance: November 30, 1999.

Effective date: Immediately, to be implemented within 60 days.

Amendment No.: 191.

Facility Operating License No. DPR–29: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: May 5, 1999 (64 FR 24194).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 30, 1999.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: April 6, 1999.

Brief description of amendments: The amendments revised the Technical Specifications (TS) to expand the allowable values for Interlocks P–6 (Intermediate Range Neutron Flux) and P–10 (Power Range Neutron Flux) in TS 3.3.1, Table 3.3.1–1, Function 16, Reactor Trip System Interlocks, as recommended by Westinghouse.

Date of issuance: November 30, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–189; Unit 2–170.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: May 19, 1999 (64 FR 27319).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 30, 1999.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of application for amendment: May 5, 1999.

Brief description of amendment: This amendment conforms the license to reflect the transfer of Operating License NPF–58 for the Perry Nuclear Power Plant, Unit 1, to the extent held by Duquesne Light Company, to the Cleveland Electric Illuminating Company as previously approved by an Order dated September 30, 1999.

Date of issuance: December 3, 1999.

Effective date: December 3, 1999.

Amendment No.: 108.

Facility Operating License No. NPF–58: This amendment revised the operating license.

Date of initial notice in **Federal Register***:* June 14, 1999 (64 FR 31879).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 1999.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Dade County, Florida

Date of application for amendments: July 27, 1999, as supplemented October 4, 1999.

Brief description of amendments: Revises the Technical Specifications (TS) to extend the allowed outage time, on a one-time basis, for an inoperable emergency diesel generator from 72 hours to 7 days, to replace the Unit 3 diesel engine radiators prior to April 2000. The revision applies to Turkey Point Unit 3 only, however, Unit 4 is included administratively because the TS are combined for both Units.

Date of issuance: November 19, 1999.

Effective date: As of date of issuance, to be implemented prior to April 2000.

Amendment Nos.: 202 and 196.

Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the TS.

Date of initial notice in **Federal Register***:* August 25, 1999 (64 FR 46441). The supplemental letter of October 4, 1999, provided clarification information that did not change the original no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 19, 1999.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: October 8, 1998.

Brief description of amendments: The proposed amendments would change the Technical Specifications for both units to place tighter restrictions on the allowed outage time for the refueling water storage tank water level instrumentation.

Date of issuance: November 30, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 232 and 215.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register***:* August 31, 1999 (64 FR 47532). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 30, 1999.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: September 10, 1999.

Brief description of amendments: The amendments revise Technical Specification (TS) 3/4.4.7 so that the surveillance requirement does not need to be performed when the reactor is defueled with no forced circulation. The revision to TS 3/4.4.7 also includes changes to Tables 3.4–1 and 4.4–3. TS Table 4.4–3 is revised to change the reactor coolant system (RCS) chemistry sampling frequency from three times per 7 days with a maximum interval of 72 hours to a frequency of at least once per 72 hours. An editorial change to Unit 1 Tables 3.4–1 and 4.4–3 relocates the asterisk for the footnote to a position adjacent to the parameter ''dissolved oxygen,'' from its current position next to the allowable chemistry limit in Table 3.4–1 and the analysis frequency in Table 4.4–3. An editorial change also corrects the footnote for Table 3.4–1 for Unit 1 and Unit 2 by making the word ''limit'' plural, as it applies to both the steady-state and transient limits. Surveillance Requirement 4.11.2.2 is revised to delete the phrase ''by analysis of the Reactor Coolant System noble gases.''

Date of issuance: November 19, 1999.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 231 and 214.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register***:* October 6, 1999 (64 FR 54376).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 19, 1999.

No significant hazards consideration comments received: No.

PECO Energy Company, Docket No. 50–352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: June 7, 1999.

Brief description of amendment: The amendment revised the technical specifications (TSs) to reflect the permanent deactivation in the closed position of the ''wet'' instrument reference leg isolation valve HV–61–102. Specifically, TS Table 3.6.3.1, ''Primary Containment Isolation Valve,'' and its associated notations were revised to reflect this current plant configuration.

Date of issuance: November 18, 1999.

Effective date: As of its date of issuance and shall be implemented within 30 days.

Amendment No.: 138.

Facility Operating License No. NPF–39. This amendment revised the TSs.

Date of initial notice in **Federal Register**: October 6, 1999 (64 FR 54380).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 18, 1999.

No significant hazards consideration comments received: No.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: January 15, 1999, as supplemented January 18 and October 22, 1999.

Brief description of amendment: The amendment provides a revision to the Technical Specifications for the FitzPatrick Nuclear Power Plant by modifying the description of what constitutes an acceptable Local Power Range Monitor calibration.

Date of issuance: November 22, 1999.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 257.

Facility Operating License No. DPR–59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register***:* April 10, 1999 (64 FR 11965).

The January 18, 1999, and October 22, 1999, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 22, 1999.

No significant hazards consideration comments received: No.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: June 22, 1999.

Brief description of amendment: This amendment changes the Technical Specifications by extending the pressure-temperature (P-T) limit curves to 24 effective full-power years (EFPY) and 32 EFPY. The current P-T limit curves are valid through 16 EFPY.

Date of issuance: November 29, 1999.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 258.

Facility Operating License No. DPR–59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register***:* August 11, 1999 (64 FR 43775).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 29, 1999.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: June 30 1997, as supplemented by letters of February 22, March 19, June 30, and October 4, 1999.

Brief Description of amendments: The amendments change the Technical Specifications (TS) to clarify surveillance requirements for the control room emergency filtration system, penetration room filtration system, and related storage pool ventilation system. The changes also revised the required number of radiation monitoring instrumentation channels, and deleted the containment purge exhaust filter TS.

Date of issuance: November 23, 1999.

Effective date: As of the date of issuance and shall be implemented within 120 days from the date of issuance.

Amendment Nos.: 145 and 136.

Facility Operating License Nos. NPF–2 and NPF–8: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register***:* September 1, 1999 (64 FR 47870).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 23, 1999.

No significant hazards consideration comments received: No.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: September 21, 1999.

Brief description of amendment: The amendment increases the required volume of stored fuel in the diesel fuel oil storage tank as a result of a conservative recalculation of diesel generator fuel consumption.

Date of Issuance: November 22, 1999.

Effective date: As of its date of issuance, and shall be implemented within 30 days.

Amendment No.: 180.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 20, 1999 (64 FR 56537). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated November 22, 1999.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: September 21, 1999, as supplemented by letter dated November 5, 1999.

Brief description of amendment: The amendment extended the effective full implementation date by six months, from December 31, 1999, to June 30, 2000, for Amendment No. 120 issued March 22, 1999, that approved a modification to increase the storage capacity of spent fuel assemblies at the site. The extension is due to delays fabricating and installing the new fuel storage racks.

Date of issuance: November 30, 1999.

Effective date: November 30, 1999, to be implemented by June 30, 2000.

Amendment No.: 129.

Facility Operating License No. NPF–42. The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 20, 1999 (64 FR 56538). The supplemental letter of November 5, 1999, provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 30, 1999.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application 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.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a Federal Register notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an

opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By January 14, 1999, 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 electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

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 the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: November 17, 1999.

Brief description of amendments: The amendments revised the Technical Specifications to modify the definition

of steam generator repair limit for axial tube imperfections detected between the primary side surface of the tube sheet clad and the end of the tube.

Date of Issuance: December 3, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–308; Unit 2–308; Unit 3–308.

Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes. The NRC published a public notice of the proposed amendments, issued a proposed finding of no significant hazards consideration and requested that any comments on the proposed no significant hazards consideration be provided to the staff by the close of business on December 2, 1999. The notice was published in the ''Greenville News,'' Greenville, SC; and the ''Anderson Independent-Mail,'' Anderson, SC, on November 24, 1999. No comments have been received.

The Commission's related evaluation of the amendments, finding of exigent circumstances, consultation with the State of South Carolina, and final no significant hazards consideration determination are contained in a Safety Evaluation dated December 3, 1999.

Attorney for licensee: Richard W. Blackburn, Esquire, Winston and Strawn, 1400 L Street, NW, Washington DC 20005.

NRC Section Chief: Richard L. Emch, Jr.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: November 10, 1999 (PCN–510).

Brief description of amendments: The amendments modify the Technical Specification Limiting Condition for Operation 3.4.9.b to delete the phrase stating that two groups of pressurizer heaters be ''capable of being powered from an emergency power supply.

Date of issuance: November 22, 1999.

Effective date: November 22, 1999.

Amendment Nos.: Unit 2–161; Unit 3–152.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes. The NRC published a public notice of the proposed amendments, issued a proposed finding of no significant hazards consideration, and requested that any comments on the proposed no significant hazards consideration be provided to the staff by close of business November 19 , 1999. The notice was published in the ORANGE COUNTY REGISTER on November 15–16, 1999. No public comments were received.

The Commission's related evaluation of the amendments, finding of exigent circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated November 22, 1999.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Stephen Dembek.

Dated at Rockville, Maryland, this 8th day of December 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–32311 Filed 12–14–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG–1082 (which should be mentioned in all correspondence concerning this draft guide), is titled ''Assessing and Managing Risk Before Maintenance Activities at Nuclear Power Plants.'' This guide is being developed to propose guidance on implementing certain provisions of the NRC's Maintenance Rule by endorsing a revised Section 11 of an industry guideline, NUMARC 93–01, ''Industry Guideline for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants,'' which was prepared by the Nuclear Energy Institute.

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by January 10, 2000.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@NRC.GOV.* For information about the draft guide and the related documents, contact Mr. W.E. Scott at (301) 415–1020; e-mail MJD1@NRC.GOV.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by fax to (301) 415–2289, or by e-mail to <DISTRIBUTION@NRC.GOV>. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 26th day of November 1999.

For the Nuclear Regulatory Commission.

Charles E. Ader,

Director, Program Management, Policy, Development & Analysis Staff, Office of Nuclear Regulatory Research.

[FR Doc. 99–32488 Filed 12–14–99; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's web site (http://www.pbgc.gov).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in December 1999. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in January 2000.

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

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the ''applicable percentage'' (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the ''premium payment year''). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in December 1999 is 5.23 percent (*i.e.,* 85 percent of the 6.15 percent yield figure for November 1999).

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between January 1999 and December 1999.

For premium payment years beginning in:	The assumed interest rate is:
January 1999	4.30
February 1999	4.39
March 1999	4.56
April 1999	4.74
May 1999	4.72
June 1999	4.94
July 1999	5.13
August 1999	5.08
September 1999	5.16
October 1999	5.16
November 1999	5.32
December 1999	5.23

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in January 2000 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 13th day of December 1999.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 99–32607 Filed 12–14–99; 8:45 am]

BILLING CODE 7708–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Gross Earnings Report.

(2) *Form(s) submitted:* BA–11.

(3) *OMB Number:* 3220–0132.

(4) *Expiration date of current OMB clearance:* 1/31/2000.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Business or other for-profit.

(7) *Estimated annual number of respondents:* 536.

(8) *Total annual responses:* 556.

(9) *Total annual reporting hours:* 345.

(10) *Collection description:* Section 7(c)(2) of the Railroad Retirement Act requires a financial interchange between the OASDHI trust funds and the railroad retirement account. The collection obtains gross earnings of railway employees on a 1% basis. The information is used in determining the amount which would place the OASDHI trust funds in the position they would have been if railroad service had been covered by the Social Security and FIC acts.

Additional Information or Comments

Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and the OMB reviewer, Lori Schack (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99–32254 Filed 12–14–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34–42210; File No. SR–MSRB–99–10)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Amending Rule A–4(d), ''Action Without a Meeting''

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 1, 1999, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board'') filed with Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is published this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

solicit comments on the proposed rule change from interested person.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is proposing to amend its Rule A–4(d) entitled ''Action Without a Meeting,'' to allow actions on proposed rules and rule amendments without a Board meeting. Below is the text of the proposed rule change.

Rule A–4. Meeting of the Board.

(a)–(c) No change.

(d) Action Without a Meeting. Action by the Board[, other than action on proposed rules or proposed amendments to rules of the Board,] may be taken without a meeting by written consent of the Board setting forth the action so taken or by telephone poll of all members of the Board, provided that, in the case of action taken by telephone poll, the Board, at a meeting, or the chairman of the Board authorizes the action to be taken by such means. The Executive Director shall transmit to each Board member, as soon as practicable after a telephone poll is taken, a written statement setting forth the question or questions with respect to which the telephone poll was taken and the results of the telephone poll. Such statement shall also be entered in the minutes of the next Board meeting. In the case of action taken without a meeting by written consent or telephone poll, an affirmative vote of a majority of the whole Board is required.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections, A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

Currently Rule A–4(d), entitled ''Action Without a Meeting,'' provides that action by the Board, other than action on proposed rules or rule amendments, may be taken without a meeting. Instead, action may be taken either by written consent of the Board or by telephone poll of all members of the Board, provided that certain administrative procedures are followed.[3]

Rule A–4(d) was adopted to allow the Board to act on matters, other than proposed rules or rule amendments, requiring immediate attention when it was not possible or practicable to convene a formal Board meeting.[4] In the past, Rule A–4(d) has operated effectively and has allowed the Board the flexibility necessary to respond efficiently and appropriately to industry and Board needs.[5]

However, the Board believes that its rulemaking process has been delayed in certain instances because Rule A–4(d) prohibits the Board from taking action on proposed rules and rule amendments without a formal meeting.[6] This proposal amends Rule A–4(d) to allow Board action on proposed rule change will allow it to more efficiently deal with rulemaking matters of a technical or time-sensitive nature.

The Board represents that the proposal will not affect the safeguards established within Rule A–4(d), since these procedures require that all Board members are kept informed of, and participate in, any action, including rulemaking matters, taken without a formal Board meeting.[7] The Board believes that the proposed rule change is consistent with Section 15B(b)(2)(C)[8] and Section 15B(b)(2)(I)[9] of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is concerned solely with the operation and administration of the Board and thus, has become effective pursuant to Section 19(b)(3)(A)[10] of the Act and subparagraph (f)(2) of Rule 19b–4 thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All submissions should refer to File No.

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[3] The administrative procedures contained in Rule A–4(d) are:

* * * in the case of action taken by telephone poll, the Board, at a meeting, or the chairman of the Board authorizes the action of be taken by such means. The Executive Director shall transmit to each Board member, as soon as practicable after a telephone poll is taken, a written statement setting forth the question or questions with respect to which the telephone poll was taken and the results of the telephone poll. Such statement shall also be entered in the minutes of the next Board meeting. In the case of action taken without a meeting by written consent or telephone poll, an affirmative vote of a majority of the whole Board is required.

[4] *See* Securities Exchange Act Release No. 34296 (July 1, 1994), 59 FR 35539–01 (July 12, 1994).

[5] The Board represents that occasionally it has used the telephone poll method in place of a formal meeting for non-rule matters.

[6] In its filing, the Board notes that it meets only four times each year.

[7] *See* Note 3, *supra.*

[8] This section requires, in pertinent part, that the Board's rules shall:

* * * be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

[9] This section authorizes the Board to adopt rules that provide for the operation and administration of the Board.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

[12] In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

SR–MSRB–99–10 and should be submitted by January 5, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [13]

Jonathan G. Katz,

Secretary.

[FR Doc. 99–32473 Filed 12–14–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42202; File No. SR–Phlx–99–43]

Self-Regulatory Organizations; Notice of Withdrawal of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Assessment of a Capital Funding Fee

December 6, 1999.

On October 1, 1999, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] to amend its schedule of dues, fees, and charges to charge a $1,500 monthly fee on each seat owner. Notice of the proposed rule change was published on November 1, 1999, in the **Federal Register**, to solicit comment from interested persons.[3] On November 18, 1999, the Exchange withdrew the proposed rule change.[4]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 99–32474 Filed 12–14–99; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends Part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Notice is given that Chapter S8 for the Office of the Inspector General (OIG) is being amended to reflect the establishment of the Office of Executive Operations (S8L). Further notice is given that Chapter S8 is being amended to reflect other internal organizational and functional realignments within the OIG. The changes are as follows:

Section S8.10 The Office of the Inspector General—(Organization):

Delete:

F. The Office of Management Services (OMS) (S8G).

H. The Office of External Affairs (OEA) (S8K).

Establish:

F. The Office of Executive Operations (OEO) (S8L).

Section S8.20 The Office of the Inspector General—(Functions):

Delete in their entirety:

F. The Office of Management Services (OMS) (S8G).

H. The Office of External Affairs (OEA) (S8K).

Establish:

F. The Office of Executive Operations (OEO) (S8L) formulates and assists the Inspector General (IG) with the execution of the OIG budget and confers with the Office of the Commissioner, the Office of Management and Budget, and the Congress on budget matters. OEO conducts management analyses and establishes and coordinates general management policies of OIG. This office serves as the OIG liaison on personnel management and other administrative and management policies and practices, and equal employment opportunity and civil rights matters. This office is also responsible for the development, design, and upkeep of major automated systems throughout OIG. OEO is responsible for and coordinates OIG's strategic planning function and the development and implementation of performance measures required by the Government Performance and Results Act. OEO is also responsible for administering comprehensive Professional Responsibility and Quality Assurance programs that ensure the adequacy of OIG compliance and internal control programs. In addition, OEO administers programs for public affairs and interagency activities, OIG reporting requirements and publications, and congressional inquiries.

Section S8B.10 The Office of Investigations—(Organization):

Delete:

F. The Special Inquiries Division (SID) (S8BE).

Establish:

F. The Critical Infrastructure Division (CID) (S8BV).

R. The Manpower and Administration Division (MAD) (S8BW).

Section S8B.20 The Office of Investigations—Functions):

Delete in its entirety:

F. The Special Inquiries Division (SID) (S8BE).

Establish:

F. The Critical Infrastructure Division (CID) (S8BV) is responsible for developing and evaluating programs and policies to protect SSA from cyber and physical threats.

1. The Division conducts assessments of the vulnerability of SSA to threats and its crisis management capabilities.

2. The Division maintains liaison and partnerships with other agencies and SSA components to evaluate threat environments.

3. The Division identifies preventative measures to reduce the risk of threat against SSA.

4. The Division oversees the operations of the Electronic Crimes Team.

R. The Manpower and Administration Division (MAD) (S8BW) is responsible for staffing plans, policy development, training and preparation and circulation of internal and external reports on the activities of the Office of Investigations.

1. The Division provides monthly reports relating to the investigative productivity for OI.

2. The Division is responsible for identifying and procuring special technical investigative equipment for use by OI personnel.

3. The Division is responsible for managing and developing training programs for OI personnel.

Amend as follows:

E. The Enforcement Operations Division (EOD) (S8BC) is responsible for day-to-day coordination of the investigative and administrative information flow between OI headquarters and the field division offices.

1. The Division is responsible for the oversight of the Regional Anti-Fraud Committees in each of the 10 field divisions.

2. The Division coordinates all international investigative activities.

3. The Division manages the polygraph program.

Section S8C.10 The Office of Audit—(Organization):

Retitle:

D. The Management Audits and Technical Services Division (MATSD)

[13] 17 CFR 200.30–2(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42058 (October 22, 1999), 64 FR 58877.

[4] *See* Letter from Cynthia K. Hoekstra, Counsel, Phlx, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated November 17, 1999.

[5] 17 CFR 2000.30–3(a)(12).

(S8CB) to the General Management Audit Division (GMAD) (S8CB).

E. The Eastern Program Audit Division (EPAD) (S8CE) to the Operational Audit Division (OAD) (S8CE).

F. The Northern Program Audit Division (NPAD) (S8CG) to the Disability Program Audit Division (DPAD) (S8CG).

G. The Western Program Audit Division (WPAD) (S8CH) to the Program Benefits Audit Division (PBAD) (S8CH).

I. The Financial Audit Division (FAD) (S8CL) to the Financial Management and Performance Monitoring Audit Division (FMPMAD) (S8CL).

Establish:

J. The Policy, Planning and Technical Services Division (PPTSD) (S8CM).

Section S8C.20 The Office of Audit—(Functions):

Retitle and amend as follows:

D. The Management Audits and Technical Services Division (MATSD) (S8CB) to the General Management Audit Division (GMAD) (S8CB).

1. The Division performs audits and evaluations of SSA program and administrative functions.

2. The Division conducts short-duration, time sensitive projects that address requests from Congress, senior SSA management, and others.

3. The Division also responds to inquiries and provides support for initiatives that encourage cooperative investigation-audit efforts.

4. The Division may also assist other performance audit divisions in additional issue areas, such as performance monitoring.

E. The Eastern Program Audit Division (EPAD) (S8CE) to the Operational Audit Division (OAD) (S8CE).

2. Delete ''representative payees or aliens'' and add ''performance monitoring''.

F. The Northern Program Audit Division (NPAD) (S8CG) to the Disability Program Audit Division (DPAD) (S8CG).

1. Delete ''Program Service Centers' operations; Teleservice Centers' operations; and Disability'' and add ''Disability Insurance, Disability Determination Services' delivery and the Office of Hearings and Appeals''.

2. Delete ''representative payees or aliens'' and add ''performance monitoring''.

G. The Western Program Audit Division (WPAD) (S8CH) to the Program Benefits Audit Division (PBAD) (S8CH).

1. Delete ''Disability Determination Services' delivery and the Office of Hearings and Appeals'' and add ''Non-Disability related Supplemental Security Income issues''.

2. Delete ''representative payees or aliens'' and add ''performance monitoring''.

I. The Financial Audit Division (FAD) (S8CL) to the Financial Management and Performance Monitoring Audit Division (FMPMAD) (S8CL).

3. The division also is responsible for monitoring SSA's performance in accordance with the Government Performance and Results Act by performing an oversight role.

H. The Systems Audit Division (SAD) (S8CK).

Add as last sentence:

The division may also assist other PADs in additional issue areas, such as performance monitoring.

Establish:

J. The Policy, Planning and Technical Services Division (PPTSD) (S8CM) provides the Assistant Inspector General and the Deputy Assistant Inspector General with technical assistance, operational and staff support on the full range of his/her responsibilities.

1. Develops audit and evaluation policies and procedures, standards, and instructions for all OIG audit and evaluation activities performed by, or on behalf of, or conforming with SSA, programs, grants, contracts or operations, complying with generally accepted Government auditing standards; President's Council on Integrity and Efficiency inspection standards; and other legal, regulatory, and administrative requirements.

2. Develops policies and procedures for internal quality assurance system to provide reasonable assurance that applicable laws, regulations, procedures, standards, and other requirements are followed in all audit activities performed by, or on behalf of, SSA.

3. The division also is responsible for the management of the Office of Audit's management information system, provides support in the areas of audit resolution, training, and technical support for OIG audits and evaluations.

Delete:

Subchapter S8G The Office of Management Services (S8G).

Subchapter S8K The Office of External Affairs (S8K).

Add Subchapter:

Subchapter S8L Office of Executive Operations

S8L.00 Mission
S8L.10 Organization
S8L.20 Functions

Section S8L.00 The Office of Executive Operations— (Mission):

The Office of Executive Operations (OEO) provides staff assistance to the Inspector General (IG) and Deputy Inspector General (DIG). OEO formulates and assists the IG with the execution of the OIG budget and confers with the Office of the Commissioner, the Office of Management and Budget, and the Congress on budget matters. OEO conducts management analyses and establishes and coordinates general management policies of OIG. This office serves as the OIG liaison on personnel management and other administrative and management policies and practices, as well as on equal employment opportunity and civil rights matters. This office is also responsible for the development, design, and redesign of major automated systems throughout OIG. OEO is responsible for public affairs, interagency activities, OIG reporting requirements and publications, and congressional inquiries. OEO is also responsible for directing reviews and actions to ensure the adequacy of OIG compliance, quality assurance, and internal control programs. OEO also directs reviews and actions to ensure the adequacy of OIG internal controls in accordance with the Federal Managers' Financial Integrity Act and directs the development and implementation of an OIG strategic plan.

Section S8L.10 The Office of Executive Operations— (Organization):

The Office of Executive Operations (S8L) under the leadership of the Assistant Inspector General for Executive Operations includes:

A. The Assistant Inspector General for Executive Operations (S8L).

B. The Immediate Office of the Assistant Inspector General for Executive Operations (S8L).

1. The Budget Staff (S8L–1).

C. The Division of Human Resources and Facilities (S8LA).

D. The Division of Quality Assurance and Professional Responsibility (S8LB).

E. The Division of Systems Support (S8LC).

F. The Division of External Affairs (S8LE).

Section S8L.20 The Office of Executive Operations— (Functions):

A. The Assistant Inspector General for Executive Operations (AIGEO) (S8L) is directly responsible to the Inspector General for carrying out the OEO mission and providing general supervision to the major components of OEO.

B. The Immediate Office of the Assistant Inspector General for Executive Operations (S8L) provides the AIG with staff assistance on the full range of his/her responsibilities.

1. The Budget Staff (S8L–1) is responsible for formulating and executing the OIG budget; performing a wide range of analytical, technical, and advisory functions related to the budgetary process; and analyzing financial and economic issues and activities facing the organization including a review and analysis of proposed and/or enacted legislation and regulations.

C. The Division of Human Resources and Facilities (S8LA) is responsible for the development, presentation, and implementation of OIG nationwide management policy; a national personnel management and training program; and coordination and integration of a national facilities management program.

D. The Division of Quality Assurance and Professional Responsibility (S8LB) is responsible for planning, directing and coordinating internal comprehensive reviews of OIG operations. These reviews are conducted to evaluate and strengthen the overall performance of OIG by ensuring compliance with Governmentwide standards and internal policies and procedures. This division is also responsible for conducting investigations of allegations against OIG employees.

E. The Division of Systems Support (S8LC) is responsible for the design, development, and execution of systems operations for OIG nationwide; including the development and enforcement of network policies; implementation of networks and interfaces; monitoring and evaluating hardware, software and communications lines; and applications software interfaces with network devices.

F. The Division of External Affairs (S8LE) is responsible for directing the OIG public affairs and congressional liaison activities. DEA responds to media, congressional and constituent inquiries relating to OIG. This division is responsible for arranging press releases, coordinating press conferences, and preparing congressional testimonies, and interagency activities. DEA also prepares speeches, publications, and communicates OIG's planned and current activities and their results to the Commissioner and the Congress as well as other entities.

Dated: November 29, 1999.

James G. Huse, Jr.,

Inspector General for Social Security.

[FR Doc. 99–32249 Filed 12–14–99; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

BUREAU OF NONPROLIFERATION

[Public Notice 3175]

Imposition of Lethal Military Equipment Sanctions Against the Government of Kazakhstan and Partial Waiver of These Sanctions

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The United States Government has determined that the Government of Kazakhstan transferred lethal military equipment to a country determined by the Secretary of State to be a state sponsor of terrorism. The United States Government determined that, despite the transfers, furnishing assistance to the Government of Kazakhstan, other than assistance furnished to a Government of Kazakhstan-owned entity, a private Czech entity and three officials from the private Czech entity that were specifically involved in the transfer of lethal military equipment, is important to the national interests of the United States. Further, it is the policy of the United States Government to deny all U.S. Government assistance to these entities and foreign persons.

EFFECTIVE DATE: November 17, 1999.

FOR FURTHER INFORMATION CONTACT: Joseph Smaldone, Office of Export Controls and Conventional Arms Nonproliferation Policy, Bureau of Nonproliferation, Department of State, (202–647–4231).

SUPPLEMENTARY INFORMATION: Pursuant to section 620H of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2378), section 573 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1994 (Pub. L. 103–87), section 563 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1995 (Pub. L. 103–306), section 552 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996 (Pub. L. 104–107), section 551 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (Pub. L. 104–208), section 550 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (Pub. L. 105–118), section 551 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999 (Pub. L. 105–277), and Executive Order 12163, as amended, on November 17, 1999, the United States Government determined that the Government of Kazakhstan has provided lethal military equipment to a country determined by the Secretary of State to be a state sponsor of terrorism. Also on November 17, 1999 and pursuant to the aforementioned provisions of law, the United States Government determined furnishing assistance restricted by these provisions to the Government of Kazakhstan, with the exceptions that follow, is important to the national interests of the United States. Assistance to the following entity, its sub-units, subsidiaries and successors, is prohibited:

(1) Uralsk Plant Metallist (including at 1 Urdinskaya Street, City of Uralsk, Republic of Kazakhstan 417024).

In addition, providing U.S. Government assistance to the Government of Kazakhstan that directly or indirectly pays for goods, services or technology of the following foreign entity and individuals and providing U.S. Government assistance to the following foreign entity and individuals is prohibited:

(1) Agroplast, a.s. (including at nam. Dr. E. Benese Square 13, Liberec 1, Czech Republic);

(2) Petr Pernicka (including at 26/2 Soukenne nam., Liberec, Czech Republic);

(3) Zbynek Svejnoha, (including at 603/4 Vodnyanska, Liberec 14, Czech Republic);

(4) Alexander Petrenko, (Kazakhstani citizen, currently residing in the Republic of Kazakhstan).

Further, it is the policy of the United States Government to deny all types of U.S. Government assistance to the aforementioned foreign entities and individuals.

These measures shall remain in place until further notice.

Dated: December 9, 1999.

John P. Barker, Jr.,

Deputy Assistant Secretary of State for Nonproliferation Controls.

[FR Doc. 99–32499 Filed 12–14–99; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice Number 3172]

Overseas Schools Advisory Council; Notice of Meeting

The Overseas Schools Advisory Council, Department of State, will hold

its Executive Committee Meeting on Thursday, January 27, 2000, at 9:30 a.m. in Conference Room 1107, Department of State Building, 2201 C Street, NW, Washington, DC. The meeting is open to the public.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving those American-sponsored schools overseas, which are assisted by the Department of State and which are attended by dependents of U.S. Government families and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. Access to the State Department is controlled, and individual building passes are required for each attendee. Persons who plan to attend should so advise the office of Dr. Keith D. Miller, Department of State, Office of Overseas Schools, Room H328, SA–1, Washington, DC 20522–0132, telephone 202–261–8200, prior to January 17, 2000. Visitors will be asked to provide their date of birth and Social Security number at the time they register their intention to attend and must carry a valid photo ID with them to the meeting. All attendees must use the C Street entrance to the building.

Dated: December 6, 1999.

Keith D. Miller,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 99–32498 Filed 12–14–99; 8:45 am]

BILLING CODE 4710–24–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Small and Minority Business (ISAC–14)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting.

SUMMARY: The Industry Sector Advisory Committee on Small and Minority Business (ISAC–14) will hold a meeting on December 13, 1999, from 9:15 a.m. to 2:45 p.m. The meeting will be open to the public from 9:15 a.m. to 12:30 p.m. and closed to the public from 12:30 p.m. to 2:45 p.m.

DATES: The meeting is scheduled for December 13, 1999, unless otherwise notified.

ADDRESS: The meeting will be held at the Department of Commerce, Room 4830, located at 14th Street and Constitution Avenue, NW., Washington, DC, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Millie Sjoberg or Cory Churches, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230, (202) 482–4792 or Ladan Manteghi, Office of the United States Trade Representative, 1724 F St. NW., Washington, DC 20508, (202) 395–6120.

SUPPLEMENTARY INFORMATION: The ISAC–14 will hold a meeting on December 13, 1999 from 9:15 a.m. to 2:45 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to section 2155(f)(2) of Title 19 of the Untied States Code and Executive Order 11846 of March 27, 1975, the Office of the U.S. Trade Representative has determined that part of this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. During the discussion of such matters, the meeting will be closed to the public from 12:30 p.m. to 2:45 p.m. The meeting will be open to the public and press from 9:15 a.m. to 12:30 p.m., when other trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committees will not be invited to comment.

Pate Felts,

Acting Assistant United States Trade Representative, Intergovernmental Affairs and Public Liaison.

[FR Doc. 99–32469 Filed 12–14–99; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issues—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of a new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: Notice is given of a new task assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

FOR FURTHER INFORMATION CONTACT: Kristin Larson, Transport Standards Staff, ANM–110, FAA, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Ave. SW., Renton, WA 98055–4056, telephone (425) 227–1760, fax (425) 227–1100.

SUPPLEMENTARY INFORMATION:

Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulations (FAR) and practices with the aviation authorities in Europe and Canada.

One area ARAC deals with is transport airplane and engine issues. These issues involve the airworthiness standards for transport category airplanes in 14 CFR parts 25, 33, and 35 and parallel provisions in 14 CFR parts 121 and 135. The corresponding European airworthiness standards for transport category airplanes are contained in Joint Aviation Requirements (JAR)–25, JAR–E and JAR–P, respectively. The corresponding Canadian Standards are contained in Chapters 525, 533, and 535, respectively.

The Task

This notice is to inform the public that the FAA has asked ARAC to provide advice and recommendation on the following harmonization task:

Task 6: Aging Aircraft Program (Widespread Fatigue Damage) (WFD)

The FAA requests that ARAC propose new operating rules (14 CFR parts 91, 121, 125, 129, and 135) that would ensure that no large transport category airplane (>75,000 lbs. Gross Take Off Weight) is operated beyond the flight cycle limits to be specified in the regulation, unless an ''Aging Aircraft Program'' has been incorporated into the operator's maintenance program.

The proposed rule and advisory material will establish:

1. The content of the Aging Aircraft Program (e.g., the necessary special inspections and modification actions for prevention of WFD), and

2. A limit of the ''validity'' (in terms of flight cycles or hours) of the Aging Aircraft Program where additional reviews are necessary for continued operation.

Additionally, ARAC is asked to review 14 CFR 25.1529 and 14 CFR part 25, Appendix H, and recommend changes to establish:

1. The required content of an Aging Aircraft Program.

2. The criteria by which to determine the validity of the Aging Aircraft Program (in terms of flight cycles or flight hours). This would effectively prohibit the operation of airplanes beyond the limited validity of the maintenance program. In order to operate beyond the declared limit, further evaluation of the design must be accomplished and the additional inspections and/or modifications added to the Aging Aircraft Program as necessary.

The FAA may ask ARAC to recommend disposition of any substantive comments the FAA receives in response to any of the notices of proposed rulemaking that result from ARAC's recommendations.

The FAA expects ARAC to forward its recommendations to the FAA within 9 months after tasking.

ARAC Acceptance of Task

ARAC has accepted this task and has chosen to assign it to the existing Airworthiness Assurance Working Group. The working group serves as staff to ARAC to assist ARAC in the analysis of the assigned task. Working group recommendations must be reviewed and approved by ARAC. If ARAC accepts the working groups recommendations, it forwards them to the FAA as ARAC recommendations.

Working Group Activity

The working group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of the task, including the rationale supporting such a plan, for consideration at the meeting of ARAC to consider transport airplane and engine issue held following publication of this notice.

2. Give a detailed conceptual presentation of the proposed recommendations, prior to proceeding with its work.

3. Draft appropriate regulatory documents with supporting economic and other required analyses, and any other related guidance material or collateral documents to support its recommendations.

4. Provide a status report at each meeting of ARAC held to consider transport airplane and engine issues.

The Secretary of Transportation has determined that the formation and use of ARAC are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of ARAC will be open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Airworthiness Assurance Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on December 9, 1999.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 99–32462 Filed 12–14–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–44]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 4, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on December 9, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Docket No.: 29819.

Petitioner: Bombardier.

Section of the FAR Affected: 14 CFR 25.813(e).

Description of Relief Sought: To permit doors between passenger compartments on BD700–1A10 airplanes used for corporate transportation.

Docket No.: 29436.

Petitioner: Airport Services.

Section of the FAR Affected: 14 CFR 145.37(b).

Description of Relief Sought: To permit Airport Services to apply for a Federal Aviation Administration repair station certificate without having suitable permanent housing for at least one of the heaviest aircraft within the weight class of the rating it seeks.

Docket No.: 29411.

Petitioner: Spirit Aviation Inc.

Section of the FAR Affected: 14 CFR 135.225(g).

Description of Relief Sought Disposition: To permit Spirit Aviation to conduct takeoffs in single-pilot, turbine powered airplanes where takeoff visibility is one-half of a mile down to 1,800 feet runway visual range, subject to certain conditions and limitations.

Dispositions of Petitions

Docket No.: 29805.

Petitioner: Cambridge Valley Flying Club.

Section of the FAR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendixes I and J to part 121.

Description of Relief Sought/Disposition: To permit allow CVFC to conduct local sightseeing flights at the Chapin Field Airport to raise funds for the George Chapin Memorial Scholarship Fund on October 9, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. GRANT, 10/8/99, Exemption No. 7032

Docket No.: 29811.

Petitioner: Tri-Cities Pilot's Association.

Section of the FAR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendixes I and J to part 121.

Description of Relief Sought/Disposition: To allow TCPA to conduct local sightseeing flights at the Tri-Cities Airport to raise funds for the Human Society on October 9, 1999, with a rain date of Oct. 16, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. GRANT, 10/8/99, Exemption No. 7033

Docket No.: 27860.

Petitioner: Skydive Academy of Hawaii Corporation.

Section of the FAR Affected: 14 CFR 105.43(a).

Description of Relief Sought/Disposition: To permit nonstudent foreign national parachutists to participate in Skydive Hawaii-sponsored parachute jumping events without complying with the parachute packing and equipment requirements of § 105.43(a).

GRANT, 10/4/99, Exemption No. 7015.

Docket No.: 29761.

Petitioner: Champion Air.

Section of the FAR Affected: 14 CFR 121.344 (b)(3).

Description of Relief Sought/Disposition: To permit Champion Air to operate two B–727–200 airplanes (Registration Nos. N292AS and N295AS; Serial Nos. 21458 and 22147, respectively) without installing the required DFDR on each airplane until January 15, 2000. *GRANT, 10/1/99, Exemption No. 7014.*

Docket No.: 29770.

Petitioner: Vermont Pilots' Association.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I and J of part 121.

Description of Relief Sought/Disposition: To allow VPA to conduct local sightseeing flights for a fundraising event on the weekend of September 25, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *GRANT, 9/24/99, Exemption No. 7003.*

Docket No: 29789.

Petitioner: Michael D. Seeley.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I and J of part 121.

Description of Relief Sought/Disposition: To allow him to conduct local sightseeing flights for the fly-in/drive-in at the Taylorville Municipal Airport on the weekend of October 2, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuses prevention requirements of part 135. *GRANT, 10/1/99, Exemption No. 7013.*

Docket No.: 29769.

Petitioner: Lance Air.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I and J of part 121.

Description of Relief Sought/Disposition: To allow Lance Air to conduct local sightseeing flights at Grimes Airport for the airshow given by the Golden Age Air Museum on October 2 and 3, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *GRANT, 10/1/99, Exemption No. 7011.*

Docket No.: 29767.

Petitioner: Lowell City Airport.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I and J of part 121.

Description of Relief Sought/Disposition: To allow LCAB to conduct local sightseeing flights for a fundraising event on the weekend of September 25, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *GRANT, 9/24/99, Exemption No. 7005.*

Docket No.: 29752.

Petitioner: Wallace State Community College.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I and J of part 121.

Description of Relief Sought/Disposition:

To allow WSCC to conduct local sightseeing flights at Folsom Field for the Cullman Airport Family Fun Day on September 25, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *GRANT, 9/24/99, Exemption No. 7002.*

Docket No.: 29763.

Petitioner: Fullerton Municipal Airport.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I & J of part 121.

Description of Relief Sought/Disposition: To allow FMA to conduct local sightseeing flights for a fundraising event on the weekend of September 25, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *GRANT, 9/24/99, Exemption No. 7004.*

Docket No.: 28962.

Petitioner: Bombardier Services Corporation, West Virginia Air Center.

Section of the FAR Affected: 14 CFR 145.45(f).

Description of Relief Sought/Disposition: To permit Bombardier to assign copies of its Inspections Procedures Manual (IPM) to key individuals within departments and to functionally place an adequate number of IPMs for access by all employees, rather than giving a copy of the IPM to all supervisory and inspection personnel. *GRANT, 9/29/99, Exemption No. 6677A.*

Docket No.: 29759.

Petitioner: Aviation Ventures, Inc., d.b.a. Vision Air.

Section of the FAR Affected: 14 CFR 135.152(a).

Description of Relief Sought/Disposition: To permit Aviation Ventures, Inc., doing business as Vision Air to operate up to 10 DO228 airplanes under part 135 without the required DFDR. *GRANT, 9/27/99, Exemption No. 7009.*

Docket No.: 29694.

Petitioner: Angel Flight of Georgia.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I & J of part 121.

Description of Relief Sought/Disposition: To allow Angel Flight to conduct local sightseeing flights for a fundraising event on September 18 and 19, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *GRANT, 9/17/99, Exemption No. 6997.*

[FR Doc. 99–32486 Filed 12–14–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration Policy and Final Guidance Regarding Benefit Cost Analysis (BCA) on Airport Capacity Projects for FAA Decisions on Airport Improvement Program (AIP) Discretionary Grants and Letters of Intent (LOI)

AGENCY: Federal Aviation Administration; Department of Transportation.

ACTION: Notice of Modification of Policy; Comments and Responses, Final Guidance.

SUMMARY: On June 24, 1997, the FAA issued an interim policy notice requiring airport sponsors to submit BCAs when requesting AIP grants or LOIs to be awarded for capacity projects at the discretion of the Secretary of Transportation. The FAA now is (1) Providing a more precise definition of airport capacity projects, (2) Issuing the final policy, and (3) Responding to comments requested on June 24, 1997, on (a) Dollar thresholds for requiring BCA, (b) The interim guidance for preparing BCAs, and (c) Preparation of FAA forecasts of operations and enplanements.

Definition of airport capacity projects. For the purpose of this BCA policy, airport capacity projects are those projects that (1) Preserve an infrastructure, (2) Improve upon an existing infrastructure, or (3) Create new infrastructure. Capacity projects include airside projects such as runways, taxiways, and aprons but may also include terminal buildings, ground transportation, and other landside projects. Normally, airport capacity projects are located at large air carrier airports where there is existing or projected airfield capacity delay. However, there are also cases they will be located at smaller airports. For the purpose of this BCA policy, airport capacity projects include those projects that significantly change the character of a runway such that the runway is capable of being used by larger or heavier aircraft or such that approach minima are lowered. The BCA policy also covers those projects which will upgrade airport facilities to meet higher design standards and which will allow new classes or aircraft to use the airport. The BCA policy is not applicable to those projects undertaken solely for the objective of safety, security, conformance with FAA standards, or environmental mitigation.

Modification of Policy. The policy for AIP grants, issued on June 24, 1997, was that, for all capacity projects for which an airport sponsor seeks $5 million or more in AIP discretionary funds, commencing in Fiscal Year 1998, a completed BCA must accompany the grant application. The policy for LOIs was that a BCA must be completed for any request for a LOI to be issued in Fiscal Year 1997 and thereafter.

FAA, in the modifications of policy issued in this **Federal Register** Notice, has modified the previous policy to: (1) Exempt certain reconstruction projects, (2) Provide supporting guidance that will assist sponsors in identifying exempt projects, and (3) Clarify the applicability of the BCA guidance to general aviation airports.

Responses to Comments Requested on June 24, 1997. On June 24, 1997, the FAA established a docket and invited airport sponsors and other interested parties to comment on: (1) The dollar threshold for AIP grants and LOIs above which a BCA must be performed, (2) The interim BCA guidance issued on June 24, 1997, and (3) Generation of FAA forecasts of enplanements and operations. The docket was open for one year and closed on June 24, 1998. The comments and FAA's responses can be found below under the heading ''Supplemental Information.'' The FAA has modified its interim guidance based on comments received and is now issuing its final guidance for conducting AIP BCAs.

DATE: Effective date of the modified policy is December 15, 1999

ADDRESSES: Copies of the final guidance for conducting BCAs can be obtained from two offices in the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. These are the Office of Airport Planning and Programming, Airports Financial Assistance Division (AAP–500); or the Office of Aviation Policy and Plans, Systems and Policy Analysis Division (APO–200). An electronic copy of the guidance will be posed on the FAA's Airport Division website at http://www.faa.gov/arp/arphon.htm as well as the Office of Aviation Policy and Plan's website at http://api/hq.faa.gov/apo__home.htm within 14 days of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Barry Molar, Manager, Financial Assistance Division (APP–500), Office of Airport Planning and Programming, Federal Aviation Administration, 800 Independence Avenue, SW., Washington DC 20591, (202) 267–3831; or Ward Keech, Manager, Policy and Systems Analysis Division (APO–200), Office of Aviation Policy and Plans, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–3312.

SUPPLEMENTARY INFORMATION: The Secretary of Transportation and the Administrator of the FAA are charged with maintaining a national aviation system that operates safely and efficiently. The Federal Government pursues this objective in part by investing Federal funds, via AIP grants-in-aid, in modern airport facilities sufficient to handle current and future air traffic, and by facilitating local investment in such facilities.

A. Background to the Policy

AIP was first authorized in the Airport and Airway Improvement Act of 1982 (the AAIA) and was recodified as Title 49, United States Code, chapter 471, subchapter I, sections 47101 *et seq.*, (Recodification), in 1994. The Recodification provides authority and direction for the award of formula and discretionary grants-in-aid for airport improvement and planning by the Secretary. Section 47115 of the Recodification authorizes the Secretary to make AIP discretionary funds available in a manner that the Secretary considers most appropriate for carrying out the purposes of chapter 471, subchapter 1, of the Codification (i.e., airport improvement). Section 47110(e) establishes authority for the Secretary to issue LOIs. Section 47115(d) specifies that, in selecting projects for discretionary grants or LOIs to preserve and enhance capacity at airports, the Secretary must consider the benefits and costs of the projects.

The FAA revised the prior award process in 1994 to include the preparation of a BCA for capacity projects that were expected to exceed $10 million in AIP discretionary spending. Those analyses were frequently prepared by FAA staff in consultation with project sponsors. Factors leading to the requirement for BCA included: the need to improve the effectiveness of Federal airport infrastructure investments in light of a decline in Federal AIP budgets; issuance of Executive Order 12893, ''Principles for Federal Infrastructure Investments'' (January 26, 1994); and guidance from Congress citing the need for economic airport investment criteria.

Under the 1994 criteria, the FAA required the application of BCA to projects intended to preserve or enhance capacity for which sponsors sought large amounts of AIP discretionary funds. Projects to add new capacity or reconstruct existing capacity were included under the policy. LOIs and discretionary grant awards over $10 million became contingent on

demonstrating that a project's benefits exceeded its costs.

In the **Federal Register**, Vol. 59, No. 209, October 31, 1994, the FAA issued two notices of policy. The first, ''Policy for Letter of Intent Approvals Under the Airport Improvement Program'' [59 FR 54482], clarified the FAA's policies on reviewing and analyzing requests for LOIs under the AIP or successor programs. The notice stated that the FAA will consider three factors in reviewing requests for LOIs: the project's effect on overall national air transportation system capacity, project benefit and cost, and the airport sponsor's financial commitment to the project. The notice further stated that the project must have present value benefits that exceed present value costs for LOI consideration. The policy was applicable to any request for LOI under AIP at primary or reliever airports for airside development projects with significant capacity benefits. It was intended to maximize the system-wide impact of capacity projects.

The other notice, ''Policy Regarding Revision of Selection Criteria for Discretionary Airport Improvement Program Grant Awards'' [59 FR 54484], stated that a BCA would be required for any discretionary grant application for a capacity project which was expected to equal or exceed $10 million over the life of the project. The policy was undertaken to implement Executive Order 12893, ''Principles for Federal Infrastructure Investments,'' [59 FR 4233] and guidance provided in Congressional hearings regarding the use of economic analysis in evaluating Federal investment in airport infrastructure. The new policy was applicable to all new projects to be considered for AIP discretionary grant awards in FY 1995 and subsequent years.

Application of a BCA for discretionary AIP grants was limited to those capacity projects for which the total value of requested discretionary capacity grants was expected to equal or exceed $10 million over the life of the project. This limit was intended to assure that costs likely to be incurred in preparing a BCA were reasonable with respect to the value of the applications being evaluated. The $10 million threshold was also the same value at which the FAA must notify Congress prior to the issuance of LOI awards.

In the **Federal Register**, Vol. 62, No. 121, June 24, 1997, the FAA issued a notice of policy, ''Policy and Guidance Regarding Benefit Cost Analysis for Airport Capacity Projects Requesting Discretionary Airport Improvement Program Grant Awards and Letters of Intent'' (62 FR 34108). This policy lowered the dollar threshold requirement to $5 million for AIP discretionary grants and continued the existing policy of subjecting all LOIs to the BCA regardless of dollar value.

The policy also transferred responsibility for performing the BCA from the FAA to the sponsor. Initially, FAA staff conducted the BCA to ensure the consistent application of BCA methodologies among different projects, but experience with airport capacity project BCAs since October 31, 1994, showed that the BCA is most effective if accomplished early in the airport planning process by the airport sponsor. This change in timing and responsibility enables the airport sponsor to use the BCA in the alternatives selection process at a time when the BCA still has value. If the BCA is delayed until just before the airport sponsor requests discretionary AIP funds, many alternatives may not be considered because the planning process will have progressed to the point of excluding previously feasible options.

The policy left the time at which a BCA is prepared to the discretion of the sponsor, but encouraged preparation during master planning, in conjunction with environmental studies, or during project formulation. Costs attributable t6o preparing the BCA were identified as allowable costs in airport planning (including environmental analysis) projects and, like other project formulation costs such as for engineering and design, may be reimbursed in conjunction with a grant for the airport development project in which the costs were incurred.

When not feasible to include BCA during these activities, airport sponsors are responsible for conducting a BCA on a supplemental basis and submitting it to the FAA. The FAA is responsible for reviewing the BCA as part of the evaluation process of the AIP request; the FAA may request further detail on the BCA; and/or the FAA may perform an independent BCA of the project.

The interim ''FAA Airport Benefit-Cost Analysis Guidance'' was designed to enable airport sponsors to apply uniform standards in their analysis of capacity projects. Also, the shift of responsibility for the BCA to the sponsor was intended to increase the airport sponsor's acceptance of the BCA as one of several useful tools, not merely as a requirement imposed from outside.

This interim BCA guidance followed the standard structure of all benefit cost analyses. Steps including the following: (1) Defining the project objective, (2) Specifying assumptions, (3) Identifying a base case and its alternatives, (4) Determining the evaluation period, (5) Determining the effort to be expended in the analysis, (6) Assessing benefits and costs, (7) Comparing results of alternatives performing sensitivity analyses, and (8) Making an informed recommendation.

The FAA requested that airport sponsors and other interested parties comment on the interim guidance so that the final guidance will be as useful as possible to airport sponsors in performing BCA. The FAA solicited comments on the guidance itself: selection of alternatives, proposed methodology, use of sensitivity analysis, and similar technical issues in the guidance. The FAA also invited comments on the new dollar threshold for the BCA requirement for the project cost above which a BCA must be performed and comments on FAA forecasts on enplanements and operations.

The policy stated that there are certain BCA items on which the FAA is not allowed discretion and, therefore, on which the FAA did not invite comments, namely, (1) The discount rate, (2) The value of life, (3) The value of injury, and (4) The value of time.

The revised procedures described in the June 24, 1997, policy applied to any request for an LOI to be issued in Fiscal Year 1997 and thereafter and to all new airport capacity projects requesting discretionary AIP grant awards in excess of $5 million beginning in Fiscal Year 1998.

B. Modifications of Policy

As a result of experience gained reviewing airport sponsor BCAs, effective on December 15, 1999, the FAA has modified its policy as follows:

1. Exemption of Reconstruction Projects at Large and Medium Hub Airports

Large and medium hub airports are those airports which enplane at least 0.25% of the national enplanements each year. Reconstruction projects are defined as projects which preserve, repair, or restore the functional integrity of airfield pavement areas. The FAA's AIP BCA policy required BCAs for all airport capacity projects, including reconstruction projects, for which a sponsor was seeking $5 million or more in AIP discretionary funds. However, the FAA has determined that reconstruction or rehabilitation of critical airfield structures, i.e., runways and associated facilities, such as taxiways and aprons serving the runways at large and medium hub airports, is cost-beneficial and does not require the quantification of benefits (associated with continued operation of

existing critical structures) to aid in AIP project selection. Therefore, the BCA policy is modified to exempt reconstruction projects at large and medium hub size airports, except as may be required by paragraph B.3. below. This exemption applies to sponsors requesting a discretionary grant in excess of $5 million and/or LOI.

The above exemption does not apply to a reconstruction project that is linked to other capacity projects and which would not have been undertaken in the absence of the other capacity projects. For example, a project to construct a new runway or a project to convert an existing taxiway into a temporary runway would not be exempt if it would not have been proposed based on its own merits. If the above new runway or taxiway project meets the AIP discretionary threshold of $5 million, it will require a BCA. On the other hand, a reconstruction of an associated taxiway, being done for that reason alone, is strictly a reconstruction project and is exempt from the BCA requirement.

2. Exemption of Reconstruction Projects at Small Airports

Small airports (small-hub, non-hub, commercial service, and general aviation) are those airports which enplane less than 0.25% of the national enplanements each year. At small airports, the AIP BCA policy is modified to exempt reconstruction projects for primary runways and associated facilities, such as taxiways and aprons serving the primary runway. The FAA has determined that reconstruction or rehabilitation of these critical airfield structures is cost-beneficial and does not require the quantification of benefits (associated with continued operation of existing critical structures) to aid AIP project selection. This exemption applies to sponsors requesting discretionary AIP funds in excess of $5 million and/or LOIs.

FAA may require a BCA for reconstruction projects for little used facilities at small airports, *e.g.*, crosswind runways serving less than 20% of operations. This type of project generally costs much less than $5 million and, therefore, would not trigger the BCA requirement. However, in those cases that exceed $5 million, FAA may require that the sponsor demonstrate in a BCA that the avoidance of loss of air service for that particular runway generates net benefits relative to the base case. In determining the $5 million threshold at which a BCA is required, the airport sponsor would include the AIP-funded costs of the total project, including paving, drainage, grading, marking, etc. The base case would assume escalating operating and maintenance costs for the aged facility followed by the cost of closing the facility at some point when additional maintenance is no longer cost-effective.

3. Application of the Policy to a Costly or Extraordinary Reconstruction Project

Notwithstanding paragraphs B.1. and B.2. above, FAA may in some cases require a BCA on an especially costly or extraordinary reconstruction project. For instance, if a proposed project's estimated costs are distinctly high as compared to other typical reconstruction projects for that area, the FAA may require the sponsor to conduct a formal BCA for the purposes of establishing that the reconstruction project is a cost-beneficial means of retaining the capacity benefits of the facility proposed for reconstruction.

4. Application of the Policy to Facility Upgrade Projects and the Distinction Between Reconstruction Projects and a Facility Upgrade

Exemption of a reconstruction project from the requirement for a BCA does not exempt other projects that are associated with the reconstruction, such as upgrades for runway strengthening or widening. The following guidelines apply:

a. An upgrade of a runway is defined as any strengthening of the runway that significantly changes the character of the runway and results in a 1.5 Day-Night Average Sound Level (DNL) or greater increase in noise over any noise sensitive area located within the 65 DNL contour. [DNL is the energy-averaged sound level metric used by the aviation industry to determine the impact of noise.] The definition of upgrade above is consistent with the National Environmental Policy Act (NEPA) requirements for an environmental analysis pursuant to FAA Order 5050.4A, Airport Environmental Handbook, para. 22 (1985).

b. Upgrade projects also include capacity projects, such as runway lengthening or widening, undertaken to bring airport facilities up to higher design standards which will permit new classes of aircraft to use the airport.

c. FAA has determined that the AIP portion of total project cost, not just the AIP cost attributed only to the upgrade portion of the project, establishes the threshold, above which a BCA is required for a discretionary grant. Total project cost is defined, in this instance, as reconstruction cost plus upgrade cost. A BCA is required for an upgrade project if AIP discretionary funds exceed $5 M for the total project even if AIP discretionary for the upgrade on a ''stand-alone'' basis is less than $5 M.

5. Clarification of Which Costs Trigger a BCA Requirement

The BCA requirement is triggered when the total AIP request for discretionary funds for a capacity project is greater than $5 million. Total costs attributable to the project include, but are not limited to, land acquisition, site preparation, environmental mitigation requirements, noise mitigation costs, engineering, and construction.

6. Application of the Policy to General Aviation (GA) Airports

FAA has determined that the BCA has proven useful in assessing the investment potential of a capacity project at commercial service airports. FAA has also determined that the BCA is effective in the evaluation of the potential establishment of commercial service and/or cargo operations at a GA airport.

However, the FAA has had no experience yet in evaluating the BCA guidance document's applicability where an airport will continue to serve only GA operations and where an airport sponsor is seeking $5 million or more for a capacity project. Until and unless experience shows BCA not to be useful or the BCA guidance document not to be applicable at airports with only GA operations, FAA will require the sponsor to fully demonstrate its direct aviation related benefits and will review them on a case-by-case basis. Benefits must be attributable to direct aviation-related factors. Benefits must be quantified based on data that can be easily obtained and certified and that can be consistently applied, e.g., a reliever airport's contribution to delay reduction at a primary airport, where delay reduction can be demonstrated and measured. Benefits that can be ascribed to local economic improvements, but are not aviation-related benefits, will not be considered as allowable benefits.

FAA is considering developing standard guidance for the application of the BCA requirement to GA airports. In order to do this, we need to be able to quantify the benefits of GA activity. Accordingly, the FAA is willing to receive input on developing methodology to identify and measure these benefits.

C. Responses to Comments Requested on June 24, 1997

The June 24, 1997, policy requested comments on (1) the dollar threshold for AIP grants above which a BCA must be

performed; (2) the interim BCA guidance issued on that same date; and (3) preparation of FAA forecasts of enplanements and operations. Although the final guidance is not part of this **Federal Register** Notice, information pertaining to obtaining this document is listed under the **ADDRESSES** Section mentioned earlier in this notice.

1. A Summary of Changes to the BCA Guidance Based on Comments Received by FAA

a. The comments requested on the June 24, 1997, policy were mixed regarding the threshold values for requiring BCA for discretionary funds. The FAA made no changes to the threshold values based on the comments received. [As part of its own internal review, as discussed in B.1. through B.6. above, certain exemptions to the BCA policy were made.] The FAA also received several comments on aspects of the policy other than the dollar threshold.

b. Although there were few comments on the interim guidance itself, the FAA has made changes to its final guidance as a result of the comments and FAA's further experience. The most substantive two changes are:

i. ''Section 12. Adjustments of Benefits and Costs for Induced Demand'' has been made an optional analysis. If an airport sponsor believes that it can credibly accomplish this analysis and doing so will help its case, then the airport sponsor is encouraged to do the induced demand analysis. The FAA has moved the section on Induced Demand from Section 12 to Appendix C in the final guidance.

ii. In ''Section 10.4.1.3. Demand Adjustment for Exponential Delay Growth,'' the cap on average delay has been increased from 15 minutes to 20 minutes.

c. There were no comments regarding FAA forecasting of enplanements and operations.

2. More Detailed Information on Comments Received on the June 24, 1997, Policy

a. Comments on the Dollar Threshold Above Which BCA Is Required and on Other Aspects of the Policy

i. *One commentor wrote that the BCA policy will improve financial discipline and should be extended to cover additional projects, particularly those funded by Passenger Facility Charges (PFCs).*

The FAA partially concurs. The FAA agrees that the BCA policy will improve financial discipline and that a BCA is an effective tool for assessing those projects currently covered by the policy, i.e., discretionary grants for capacity projects and LOIs. While the FAA does not plan on expanding the use of the BCA to other AIP projects, we will continue to refine, and as necessary, expand our use of investment tools.

However, the FAA doe not foresee that the policy will be extended to PFCs. Executive Order 12893 is the principal basis for applying the BCA requirement. The principles to which the Executive Order refers apply only to Federal spending for infrastructure programs, *i.e.*, direct spending and grants. PFCs are not considered Federal direct spending or grants, and are therefore not covered under the Executive Order to the policy. For a project to be funded by PFC revenues, the project must be an eligible airport-related project, must accomplish the PFC objectives established under 49 USC 40117(d)(2), and must be supported with adequate justification. However, a public agency is not precluded from submitting a BCA to support its case for adequate justification.

There is not at this time, nor does the FAA foresee, a regulatory requirement for the FAA or an applicant to conduct BCA as part of the PFC application and review process. Consequently, the FAA has not issued, and does not foresee issuing, a policy requiring BCA for PFC projects. Such a policy would, most probably, require an amendment to the PFC regulation including a formal notice and comment period in the **Federal Register**.

ii. *One commentor indicated that BCA ought to be made a work element in each new master plan.*

The FAA concurs with this concept. The FAA currently recommends use of a BCA during the alternatives analysis of planning studies for planned development, the scope and time of which is suitable for BCA. This will help ensure that all project requirements are completed concurrently so as to facilitate timely project approvals. The FAA is looking at ways to institutionalize BCA in master planning, including making the BCA a required work item in any appropriate master plan funded with AIP grants.

iii. *Three commentors wrote that the BCA policy is, or could be construed to be, inappropriate, too extensive, or will not, or may not, return value at least equal to the effort involved.*

The FAA non-concurs.

There were several aspects to this comment.

(1) BCA should be limited to short term projects. BCA should be applied to any capacity project that exceeds the dollar thresholds, whether that project is short term or long term. The FAA agrees that there are more unknowns associated with long term projects just because of the longer time horizon. However, this uncertainty potentially enhances the value of applying an analytical tools such as a BCA to help in making decisions.

Furthermore, the FAA believes that a BCA should be done early enough in the alternatives selection process so that no feasible alternative has been included or excluded without considering its economic impact. However, the FAA also believes that it does not make sense to complete a BCA on projects for which there is no serious commitment for implementation. As stated in FAA's response to Comment C.2.a.ii. above, the FAA is examining ways to institutionalize early BCA within the master planning process, and currently is recommending early BCA for projects that are within five years of requesting AIP discretionary funds from FAA.

The FAA also believes that, even if the project falls within this five year window, the father away it is from the implementation date, the less precise and detailed the BCA has to be. The BCA guidance document makes provision for BCAs of different levels of generality in ''Section 9: Level of Effort.'' However, the FAA notes that, when a project is submitted to the FAA for AIP discretionary funding, it must be accompanied by a valid BCA that has addressed a full range of alternatives.

(2) The required scope of the BCA implied by the interim guidance document is excessive. The interim guidance document has an extensive list of possible work elements and these should be honed to a practical minimum in specific airport BCAs.

The FAA believes that ''Section 9: Level of Effort'' in the guidance already provides that the BCA scope should be consistent with factors such as the complexity of project, its projected timing, and the consequences of an incorrect decision.

(3) The policy itself is excessive and inappropriate. The FAA believes a BCA prepared in conjunction with a master plan or environmental analysis is neither excessive nore inappropriate because it provides the FAA with the information necessary to justify and defend allocating limited AIP discretionary funds on capacity projects.

The FAA has designed the policy to apply only to AIP discretionary funding for capacity projects over which FAA has discretion as to whether it will or will not fund the projects. The FAA believes that it requires knowledge of a project's alternatives and its benefits and costs before AIP discretionary funds

are awarded for a project. Given that no specific airport is entitled to these funds, it is entirely reasonable that airport sponsors, if they wish to request these funds, provide FAA with the information it needs to assure itself that it has made a good decision.

Additionally, the selection criteria for capacity projects requesting AIP discretionary funding require a project level BCA per Executive Order 12893, Sec. 2(a)(2) which states ''Benefits and costs should be measured and appropriately discounted over the full life cycle of each project.''

(4) The dollar threshold for discretionary grants for capacity projects and LOIs is too low. The FAA disagrees. The dollar threshold has been examined and set to capture those projects that are likely to be capacity enhancing. The dollar threshold is consistent with the types of projects that raised the greatest congressional concerns over how FAA selected projects for AIP funding, which led to the BCA requirement. The FAA has already refined the requirement to exempt projects undertaken solely for the objective of safety, security, conformance with FAA standards, or environmental mitigation. FAA has further narrowed the application to exempt certain reconstruction projects. The FAA notes that no dollar value was established in Executive Order 12893 for the project level requirements. At present, the FAA is satisfied with the threshold and has no intention to raise or lower the level.

(5) The policy is burdensome. There is no reason the policy will be burdensome if the airport sponsor tailors the scope of the BCA to the project. The FAA expects airport sponsors to make only that case which is necessary to convince the FAA that an FAA decision to fund a specific capacity project at an airport will produce aviation benefits greater than the costs invested in the project and that the manner used to achieve the development objective is the most economically efficient. We encourage sponsors to contact FAA in advance of initiating a BCA to obtain guidance and assistance, if necessary, in applying the appropriate level of effort to this guidance.

(6) The policy constitutes the promulgation of a regulation. The BCA requirement applies only to capacity projects, and only for those capacity projects for which discretionary funds or LOIs are sought from the FAA. The only mandatory requirement is that the BCA adequately convinces the FAA that awarding an AIP discretionary grant or LOI is a good investment, i.e., is a cost effective investment for achieving the project objectives. Because the decisions to award AIP discretionary grants or LOIs are matters for FAA discretion, the FAA may establish criteria for their award as policies, and need not follow the procedures for rulemaking in the Administration Procedures Act.

(7) The policy creates an additional basis for objection to capacity projects. The FAA believes that most capacity related projects that meet the criteria for a BCA are likely to generate opposition from at least one stakeholder or stakeholder group. Therefore, the BCA, master plan, and environmental documentation must be consistent and defensible. As discussed above, it is appropriate that the BCA be prepared in conjunction with other airport planning or environmental studies. While the BCA data and conclusions may provide project opponents with additional material on which to comment, the FAA has not experienced this result since the first BCA requirements were established in 1994. However, the FAA will track any such activity resulting from the BCA process and will consider an appropriate response at that time. See also our response to the comments in C.2.a.iv. immediately below.

iv. *Two commentors indicated that the BCA review process should be made more visible to the public.*

The FAA non-concurs.

There were two aspects to this comment:

(1) There should be public comment on BCAs as part of the funding approval process. The FAA does not wish to extend the existing review and evaluation period for awarding project grants and LOIs and is concerned that a separate public comment process, outside the planning and environmental process, would do so. The FAA recognizes that there is merit in evaluating input from knowledgeable groups other than airport sponsors, but BCA is only one of several requirements which FAA must consider which are not announced separately for public review and comment. Inasmuch as there are other opportunities for interested parties to provide input on the value of projects, including user consultation on AIP applications, the FAA does not believe it necessary to require public comment on a sponsor's BCA.

(2) The BCA review process should be identified in the BCA guidance document. The BCA document should identify whether BCA projects at different airports will be ranked on the basis of BCA results, whether BCA results are treated as ''pass-fail'' and what others factors are taken into account in the FAA review and prioritizing process. Based on more than five years experience preparing and reviewing BCAs, the FAA has found that each BCA has to be treated on a case-by-case basis, often with several rounds of consultation between airport sponsors, their consultants, and several different FAA offices. These reviews can extend over several years, or be accomplished within a few weeks, depending on project complexity and the experience of the airport sponsor and its consultants with BCA. Thus, except in the broadest generalities, the FAA is not able to identify a specific review process.

Nevertheless, the FAA can state that it has no present intention of ranking different airports' projects on the basis of their benefit-cost ratios or net present values. However, the FAA will not limit BCA to ''pass-fail'' among alternative projects at a given airport. The FAA is interested in knowing that AIP discretionary funds are being used in an optimal way at a given airport, not just that a specific project proves to have benefits greater than its costs.

The other factors used in deciding LOIs have already been identified in **Federal Register**, Vol. 62, No. 121, June 24, 1997 [62 FR 34108]. They are the project's effect on overall national air transportation system capacity and the airport sponsor's financial commitment to the project. The FAA prefers not to include in the BCA guidance these other factors which are used to decide whether a project seeking an LOI is funded or not because they are not part of the BCA. Further information on FAA's Priority System describing how FAA ranks its allocation of AIP funding can be found in four **Federal Register** Notices. Two were issued in Vol. 59, No. 209, October 31, 1994, ''Policy for Letter of Intent Approvals Under the Airport Improvement Program'' (59 FR 54482) and ''Policy Regarding Revision of Selection Criteria for Discretionary Airport Improvement Program Grant Awards'' (59 FR 54484). The third was issued in Vol. 61, No. 104, May 29, 1996, ''Notice of Airport Capital Improvement Program National Priority System; Opportunity to Comment'' (61 FR 26947). The fourth was in Vol. 62, No. 164, August 25, 1997, ''Airport Capital Improvement Program; National Priority System'' (62 FR 45007).

v. *One commentor indicated that the docket for comments on the BCA guidance should be reopened and the policy reviewed in three years.*

The FAA partially concurs. The FAA will take under consideration the advisability of reopening the docket and reviewing FAA BCA implementation in the future.

b. Comments on the Guidance Itself

i. *Two commentors made specific recommendations on methodology in the BCA guidance regarding the structure of the base case, increasing the cap on average delay, estimation of landside delay, and explicitly identifying in the BCA guidance those items which cannot be revised (i.e., discount rate, values of live, injury, and time)*

The FAA partially concurs.

There are four aspects to this comment:

(1) The base case should be realistic and meet project objectives. The FAA believes that the interim BCA guidance on the role of the base case should not be changed. The base case represents best practices at the airport short of a major initiative. As such, the base case may not accomplish, or fully accomplish, the specific objective(s) of a major initiative (project), such as to reduce delay from current levels. Rather, the base case may at best hold average delay at a constant level per operation or cause it not to worsen as severely as it would in a ''do nothing'' approach. Similarly, an objective such as accommodating larger and more efficient aircraft at the airport may not be possible short of a major pavement initiative. Thus, the base case should not be held to the standard of ''meeting'' objectives of a major initiative.

To prevent future confusion, the second sentence of Section 6 in the interim guidance will be replaced with the following: ''Ideally, the reference point should be the optimal cause of action compatible with the specified project objectives that would be pursued in the absence of a major initiative. However, in most instances, the base case will not fully meet the objectives specified for the potential project.''

(2) The cap on average delay should be increased from 15 minutes to 20 minutes and methods should be discussed to assess additional benefits for those alternatives which do accommodate demand. The FAA has reviewed actual delay data at one of the nation's largest and most delayed airports. Based on that data, the FAA agrees that the cap on average delay should be increased from 15 minutes to 20 minutes and has changed the BCA guidance to reflect this. Capping delay applies to all alternatives under consideration which otherwise would exceed the cap.

The BCA guidance is very extensive and considers all benefits for which the FAA has identified a credible method for measurement. However, if there are benefits that the BCA guidance does not cover, the airport sponsor has wide latitude in including them in its BCA. The FAA is willing to consider any credible methods for assessing additional aviation related benefits and is willing to consider modifying the BCA guidance to include these methods.

(3) Methods of estimating landslide delay may lead to suboptimal decisions. The FAA is willing to consider any reasonable approach for quantifying landside delay issues, including passenger convenience, and modifying the BCA guidance to include these methods.

Typically, discretionary funding for terminal buildings is limited to non-hub primary and non-primary commercial service airports. In all likelihood, a BCA for a terminal building project at such an airport would not cover work items such as people-mover systems, consequently passenger transit time versus passenger walking distances would not be evaluated. However, in some cases, particularly where an airside facility such as an apron or taxiway is an integral part of a terminal improvement, a BCA of integrated terminal facility may be a necessary component of the BCA to support AIP funding of the apron or taxiway. In this case, the FAA would be willing to consider any reasonable approach to quantifying passenger convenience associated with a moving sidewalk or other facilities to enhance passenger flows.

(4) Those items which cannot be revised (*i.e.*, discount rate, values of life, injury, and time) should be explicitly identified in the BCA guidance. A paragraph has been added to ''Section 5: Assumptions'' identifying those items which cannot be revised.

ii. *Two commentors indicated that treatment of ''induced demand'' should be dropped from the guidance or its inclusion made optional.*

The FAA concurs. ''Section 12: Adjustment of Benefits and Costs for Induced Demand'' has been made optional and moved to Appendix C of the BCA guidance.

c. Comments on FAA Forecasts of Enplanements and Operations

The FAA received no comments on FAA forecasts of enplanements and operations. However, the FAA notes that sponsors must use consistent forecast data in all planning and environmental studies of the project, including the BCA.

Issued in Washington, DC, on November 24, 1999.

Catherine M. Lang,

Director, Office of Airport Planning and Programming.

John M. Rodgers,

Director, Office of Aviation Policy and Plans.

[FR Doc. 99–32172 Filed 12–14–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Canadian Pacific Railway (Waiver Petition Docket Number FRA–1999–5894)

Canadian Pacific Railway (CP) seeks a permanent waiver of compliance with certain provisions of the Locomotive Safety Standards, 49 CFR 229.29(a), concerning the time interval requirements of the periodic cleaning, repairing and testing of locomotive air brake components for all of its locomotives operating in the United States equipped with 26L type brake equipment. FRA currently permits railroads to operate locomotives equipped with 26L type brakes for periods not to exceed 1,104 days before performing the testing and inspection required by 49 CFR 229.29(a).

CP has been testing this 48 month extended cleaning interval in a joint effort with Transport Canada under FRA waiver LI–88–4A. CP has published the final test results, which CP claims indicate that 26L type brakes can be safely operated on a 48 month schedule provided there is a maintenance program in place to prevent moisture and contaminants from entering the brake valves. CP further claims that the test results are supported by records which indicate that since 1992, CP has not experienced a train accident as the result of a malfunction of the 26L brake system or its sub components.

A report issued in April 1997 by the Rail Safety Directorate, Transport Canada, indicated that the overall test was successful, however, four

problematic valves were identified, the SA 26 independent brake valve, the 26C brake valve, the P2A brake application valve, and the A1 charging valve. Due to the problems, it was recommended that these components stay on a 36 month interval until further testing was accomplished and evaluated. Further controlled evaluation of the four problematic valves was performed on a group of ten locomotives. At the conclusion of this testing, it was determined that due to reliable filtration and expulsion of contaminants from the air system, along with improved trouble shooting methods, all exceptions to these valves have been corrected.

Based on all of the test programs, Transport Canada, in a letter dated May 11, 1999, approved CP's request to extend the inspection interval from 36 to 48 months for 26L type brake equipment with the following provisions:

◆ Air compressors be maintained in accordance with recommended practices;

◆ There are effective inspections in place to oversee that the compressor is functioning effectively;

◆ Employees are trained and qualified to carry out their specific tasks effectively;

◆ Systems for the discharge or removal of moisture such as automatic drain valves and air dryers are maintained to function effectively.

CP would like approval for this request to harmonize regulatory standards and permit the continued interchange of locomotives and railway commerce between Canada and the United States as contemplated by the NAFTA accord.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling public hearings in connection with these proceedings since the facts do not appear to warrant hearings. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 1999–5894) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, D.C. on December 9, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–32442 Filed 12–14–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Long Island Rail Road Company (Waiver Petition Docket Number FRA–1999–6372)

The Long Island Rail Road Company (LIRR) is seeking a temporary waiver of compliance with the Passenger Equipment Safety Standards, 49 CFR Part 238.113, which requires that effective November 8, 1999, each passenger car have a minimum of four emergency window exits.

LIRR requests a time extension until December 31, 2001, to bring its M–1 fleet into compliance. They state that the remainder of 1999 will be used to prototype the three different types of windows that will be needed. LIRR also states that the retrofitting will be accomplished on a three year cycle with one third of the fleet being modified per year.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number 1999–6372) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, D.C. on December 9, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–32445 Filed 12–14–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Northeast Illinois Railroad Corporation (Metra); (Waiver Petition Docket Number FRA–1999–6363)

Metra seeks a permanent waiver of compliance with the Passenger Equipment Safety Standards, 49 CFR Part 238.235, which requires that by December 31, 1999, each power operated door that is partitioned from the passenger compartment shall be equipped with a manual override adjacent to that door. Metra requests that the waiver be granted for 165 electric multiple unit passenger cars (EMU's) equipped with double leaf power operated side doors. Metra states that one of each of the double leaf

power operated side doors is equipped with a manual override. They indicate that these EMU's will be retired and replaced within the next ten years.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 1999–6363) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, S.W., Washington, D.C. 20590. Communications received by December 27, 1999, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, D.C., on December 9, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–32441 Filed 12–15–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Northeast Illinois Railroad Corporation (Metra) (Waiver Petition Docket Number FRA–1999–6361)

Metra is seeking a permanent waiver of compliance with the Passenger Equipment Safety Standards, 49 CFR Part 238.307(d)(5), which requires that each coupler be inspected not less frequently than every 184 days. Metra states that they currently inspect these couplers on an annual basis using contour maintenance gage No. 31000, aligning wing gage No. 32600 and free slack gage No. 34100–1. Metra contends that this inspection process is more restrictive than that required by 49 CFR Part 238. They further state that the failure rate of couplers for any defect is less than one percent per year. Therefore, they request the inspection interval be extended to 365 days.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 1999–6361) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, D.C. on December 9, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–32443 Filed 12–14–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49, Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Northeast Illinois Railroad Corporation (Metra); (Waiver Petition Docket Number FRA–1999–6364)

Metra seeks a permanent waiver of compliance with the Passenger Equipment Safety Standards, 49 CFR Part 238.303, which requires exterior calendar day inspection and 49 CFR 238.313, which requires a class one brake test be performed by a qualified maintenance person. Metra requests that on weekends (Saturday and Sunday) and holidays these tests be performed by a qualified person, not a qualified maintenance person required in the Passenger Equipment Safety Standards. Metra states that in many cases a qualified person can be a member of the train crew.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 1999–6364) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for

inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, D.C., on December 9, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–32444 Filed 12–14–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Thrall Car Manufacturing Company (Waiver Petition Docket Number FRA–1999–6522)

Thrall Car Manufacturing Company (TCMC) seeks a permanent waiver of compliance from certain provisions of the Safety Appliance Standards, 49 CFR 231.27(g)(3), which requires that the end platform hand hold be located not less than 48 nor more than 60 inches above the end platform.

TCMC states that 3,199 covered hopper cars have been built with the hand holds located 45¼ inches above the end platform.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number 1999–6522) and must be submitted to the DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, D.C. on December 9, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–32446 Filed 12–14–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 99–5210; Notice 2]

Ford Motor Co.; Grant of Application for Decision of Inconsequential Noncompliance

This notice grants the application by Ford Motor Company (Ford) to be exempted from the notification and remedy requirements of 49 U.S.C. 30118 and 30120 for a noncompliance with 49 CFR 571.205, Federal Motor Vehicle Safety Standard (FMVSS) No. 205, ''Glazing Materials.'' Ford has filed an appropriate report pursuant to 49 CFR Part 573 ''Defect and Noncompliance Reports.'' The basis of the grant is that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published May 5, 1999, (64 FR 24215) affording an opportunity for comment. The comment closing date was June 4, 1999. No comments were received.

Paragraph S6 of FMVSS No. 205, ''Certification and marking,'' requires that each piece of glazing material be marked as stated in Section 6 of the American National Standard Safety Code for ''Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways,'' Z26.1–1977, January 26, 1977, as supplemented by Z26.1 a–1980, July 3, 1980 (ANSI Z26). This specifies '' . . . immediately adjacent to the words ''American National Standard'' or the characters AS, each piece of safety glazing material shall further be marked in numerals at least 0.070 inch (1.78 mm) in height: if complying with the requirements of Section 4, Application of Tests, Item 1, with the numeral 1; . . .''. To satisfy this section of ANSI Z26.1, the windshields would normally bear the AS1 mark on the windshield adjacent to the Ford trademark; however, the mark was not applied to the windshields used in the noncomplying vehicles.

This petition concerns approximately 382,900 potentially noncomplying vehicles manufactured by Ford between June 11, 1997 and September 25, 1999. These vehicles included certain 1998 and 1999 Contour/Mystique, Econoline, Ranger models and approximately 8,400 Mazda B Series vehicles.

Ford supported its application for inconsequential noncompliance with the following:

> Ford was not aware of any allegations of accidents or injuries related to this condition. Ford Visteon was notified by the one final stage manufacturer of the Econoline windshields with the missing AS1 mark. In our judgment, the condition is highly unlikely to present any risk of injury. Therefore, Ford intends to petition to the Administrator for exemption from the notification and remedy requirements of the Act on the basis that the condition is inconsequential as it relates to motor vehicle safety.
>
> To avert any potential customer difficulty during vehicle inspections in states where glazing markings are checked during the inspection process, two actions are being taken by Ford. First, customers in those states will be mailed letters (to be presented to inspection authorities, if necessary) identifying the condition, and certifying that the windshields meet all other marking and performance requirements of Standard 205. The letter will also offer to apply the AS1 mark, of so requested by these customers. Second, letters will be sent to the appropriate state authorities providing an explanation of the condition, certification that the windshields fully meet all other marking requirements and all performance requirements of Standard 205, and a listing of vehicle VIN numbers of all affected vehicles registered in that state.

NHTSA has reviewed Ford's application and, for the reasons discussed below, concludes that the noncompliance of Ford's windshields is inconsequential as to motor vehicle safety. The affected windshields, while produced without the AS1 mark, contain all other markings required by FMVSS No. 205 and ANSI Z26.1, including the manufacturer's trademark, DOT number, and model number. The model number identifies the glazing material as laminated safety glass, AS1. In addition, the trademark includes the word ''Laminated'' and also includes an aftermarket National Auto Glass Specifications number that identifies the vehicles for which the windshields are designed. With the windshield markings provided, NHTSA believes that a vehicle owner is unlikely to encounter any problems obtaining the

appropriate replacement windshield should that need arise.

The affected windshields also meet all performance requirements of FMVSS No. 205 and ANSI Z26.1. The stated purposes of FMVSS No. 205 are to reduce injuries resulting from impact to glazing surfaces, to ensure a necessary degree of transparency in motor vehicle windows for driver visibility, and to minimize the possibility of occupants being thrown through the vehicle windows in collisions. Because the affected windshields fully meet all of the applicable performance requirements, the absence of the AS1 mark has no effect upon the ability of the windshield glazing to satisfy these stated purposes and thus perform in the manner intended by FMVSS No. 205.

On February 11, 1999, and July 8, 1999, Ford mailed letters to appropriate state authorities identifying the missing marking and certifying that the windshields fully meet the marking and performance requirements of FMVSS No. 205 followed by letters to vehicle owners on March 5, 1999, and August 3, 1999.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of proof that the noncompliance it describes is inconsequential to motor vehicle safety. Accordingly, Ford's petition is granted, and it is exempted from providing notification and remedy of the noncompliance as required by 49 U.S.C. 30118 and 30120.

Issued on December 10, 1999.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 99–32464 Filed 12–14–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 29430 (Sub–No. 21)]

Norfolk Southern Corporation—Control—Norfolk and Western Railway Company and Southern Railway Company (Arbitration Review)

ACTION: Request for comments.

SUMMARY: The Transportation • Communications International Union (TCU) has filed with the Board an appeal of an arbitration panel's decision holding that the Norfolk Southern Railway Company (NSR) is not required to pay displacement allowances to claimant employees after (1) their work was transferred to a new location as a result of the railroad consolidation that created NSR and (2) they exercised their seniority rights to take lower paying jobs at their current locations rather than follow their jobs to the new location. We are requesting comments from the public to develop a more complete record on the fundamental issue raised here concerning displacement allowances under our labor protective conditions imposed in rail consolidation approvals.

DATES: Comments are due by February 14, 2000. By March 14, 2000, TCU, NSR, and intervener, Brotherhood of Maintenance of Way Employes, may file replies to the comments.

ADDRESSES: Send an original and 10 copies of comments referring to STB Finance Docket No. 29430 (Sub-No. 21) to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, send one copy of comments to the representatives of TCU and NSR and to intervener, Brotherhood of Maintenance of Way Employes:

Mitchell M. Kraus, Christopher Tully, Transportation • Communications International Union, 3 Research Place, Rockville, Maryland 20850

Jeffrey S. Berlin, Krista L. Edwards, Sidley & Austin, 1722 Eye Street, N.W., Washington, DC 20006

Donald F. Griffin, Brotherhood of Maintenance of Way Employes, Suite 460, 10 G Street, N.E., Washington, DC 20002

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION:

By this notice, we are requesting public comments on issues presented by the record on the appeal of an arbitration award issued by a panel chaired by neutral member William E. Fredenberger, Jr. (the Award).

Background

In Finance Docket No. 29430 (Sub-No. 1), *Norfolk Southern Corp.—Control—Norfolk & W. Ry. Co.,* 366 I.C.C. 173 (1982), our predecessor agency, the Interstate Commerce Commission (ICC), approved the railroad consolidation that resulted in the creation of NSR. This consolidation was approved subject to the standard labor protective conditions established in *New York Dock Ry.—Control—Brooklyn Eastern Dist.,* 366 I.C.C. 60, 84–90 (1979) (*New York Dock*), *aff'd, New York Dock Ry.* v. *United States,* 609 F.2d 83 (2d Cir. 1979). Under *New York Dock,* labor changes related to approved transactions are implemented by agreements negotiated before the changes occur. If the parties cannot agree on the nature or extent of the changes, the issues are resolved by arbitration, subject to appeal to the Board under our deferential *Lace Curtain* standard of review.[1] Once the scope of the necessary changes is determined by negotiation or arbitration, employees adversely affected by them are entitled to receive comprehensive displacement and dismissal benefits for up to 6 years.

As a recent initiative in continuing to carry out that consolidation, NSR developed a plan to coordinate and to centralize certain crew calling functions performed at various locations throughout the merged system into a Crew Management Center located in Atlanta, GA. On July 3, 1996, the carrier and TCU reached an agreement to implement this plan (the Implementing Agreement).[2] On May 13, 1997, NSR notified TCU of its intention to transfer work in accordance with the Implementing Agreement. Specifically, the carrier announced that crew calling work performed on the Tennessee Division at Knoxville, TN, would be transferred to the Atlanta Crew Management Center. Positions would be abolished at Knoxville and similar positions would be established in Atlanta. On July 21, 1997, the carrier announced a similar transfer of work from the Kentucky Division to the Atlanta Crew Management Center.

Claimants worked on the Tennessee and Kentucky Divisions before their positions on those divisions were abolished. Claimants were offered similar positions in Atlanta, carrying the same rate of pay. Acceptance would have required claimants to change their residences to Atlanta. Rather than move to Atlanta, the claimants exercised seniority under their collective bargaining agreement to obtain positions on the Tennessee and Kentucky Divisions that carried rates of pay that were less than the rates in Atlanta, but that did not require them to move.

Claimants subsequently requested displacement allowances under *New York Dock* in order to recoup the difference between (1) the salaries they received on those divisions for the year before their positions were abolished and (2) their reduced salaries on the

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[1] Under 49 CFR 1115.8, the standard of review is provided in *Chicago & North Western Tptn. Co.—Abandonment,* 3 I.C.C.2d 729 (1987), *aff'd sub nom. IBEW* v. *ICC,* 826 F.2d 330 (D.C. Cir. 1988) (*Lace Curtain*).

[2] TCU submitted the Implementing Agreement in pages 8–15 of Exh. 9 of its submission to the arbitration panel.

Tennessee and Kentucky Divisions. The carrier denied claimants' requests, arguing that employees who accept lower paying jobs in their current locations rather than following their work to a new location, which would have paid them at the same level as they were previously compensated, are ineligible for displacement allowances under *New York Dock.* TCU then took the issue to arbitration under Article I, Section 11 of *New York Dock.*

The arbitration panel ruled that claimants were not entitled to benefits under *New York Dock.* The panel based its decision on two grounds: (1) that benefits were precluded by a footnote in a prior Board decision;[3] and (2) that claimants were not ''displaced'' employees under *New York Dock* because their displacement resulted from their refusal to follow their work rather than from the transaction that created NSR.[4] The employee member of the panel dissented from this ruling but did not issue a separate opinion.

TCU filed an appeal of the panel's Award. The Brotherhood of Maintenance of Way Employes (BMWE) filed a petition to intervene and tendered a separately filed brief in support of TCU's appeal.[5] NSR replied in opposition to TCU's appeal and BMWE's petition.

In a separate decision served contemporaneously with the publication of this notice, we granted BMWE's petition to intervene, denied a motion by NSR to reject part of BMWE's evidentiary submission, and denied BMWE's motion to disqualify Arbitrator Fredenberger.

[3] The panel referred to the first sentence of note 10 of our decision in *CSX Corporation—Control—Chessie System, Inc., and Seaboard Coast Line Industries, Inc.* (*Arbitration Review*), STB Finance Docket No. 28905 (Sub-No. 28) (STB served Sept. 3, 1997), where we stated: ''The ICC has in the past referred to the fundamental bargain underlying the Washington Job Protection Agreement of May 1936 (WJPA), upon which the *New York Dock Conditions* are based, as being that an employee must accept any comparable position for which he or she is qualified regardless of location in order to be entitled to a displacement allowance.''

[4] In particular, Article I, Section 1(b) of *New York Dock* provides the following definition: ''(b) 'Displaced employee' means an employee of the railroad who, as a result of a transaction is placed in a worse position with respect to his compensation and rules governing his working conditions.''

[5] BMWE argued that we must vacate the Award for the reason that neutral member William E. Fredenberger, Jr., was convicted of tax evasion in federal court in April 1999. BMWE also argues that the TCU claimants are lawfully entitled to benefits under *New York Dock* as displaced employees and should receive them as a matter of sound policy.

Comments and Information Requested

Overview

Under our *Lace Curtain* standard of review, we do not review issues of causation, the calculation of benefits, or the resolution of other factual questions in the absence of egregious error. As opposed to those types of issues, TCU presents a fundamental question of interpretation of our *New York Dock* labor protective conditions. Specifically, TCU argues that the Award fails to draw its essence from the *New York Dock* labor protection conditions by denying claimants a displacement allowance for exercising their seniority to take lower paying jobs in their current locations to avoid having to move. This question goes to the heart of the *New York Dock* bargain of allowing railroads to implement approved consolidation transactions while providing a level of protection to adversely affected employees. Accordingly, we will hear the appeal brought by TCU.

This appeal raises a major issue concerning the interpretation of our *New York Dock* conditions, that is, whether employees whose positions are abolished as a result of a *New York Dock*-conditioned transaction may receive a displacement allowance when they exercise their seniority to take lower paying positions at their current locations rather than following their work to new locations established as a result of the transaction. The record currently before us indicates that some in the rail industry have interpreted this issue one way while others have interpreted it the other way. The resolution of this issue appears to have an impact reaching beyond the original parties to this proceeding. Thus, we are seeking additional comments to supplement the record.

To keep the delay caused by our procedure from unduly harming employees if they are ultimately found eligible for displacement allowances, we propose to award interest on any sums owed, calculated from the date that any compensation should have been paid. *See Burlington Nor., Inc.—Cont. and Mer.—St. L.-San Fran. Ry. Co.,* 6 I.C.C.2d 351, 355–56 (1990). The rates of interest would be determined and compounded as provided in 49 CFR part 1141.[6]

We are also aware that rail labor and rail management have been engaged in private discussions regarding labor issues related to Board approval of railroad consolidations. If any agreements that are reached pursuant to those discussions, or the discussions themselves, have relevance to what we are doing here, the parties are invited to advise us of the effect, if any, of those agreements or discussions on the case before us.

[6] *See Procedures to Calculate Interest Rates,* 9 I.C.C.2d 528 (1993).

Issues Raised by the Parties

Appearing below is a summary of what we believe to be the most important issues raised by the parties and the questions or sub-issues arising out of these issues. This list is not intended to be exclusive. Commenters are invited to discuss any other issues and to submit evidence bearing on them.

Article I, Section 1(b)

Article I, Section 1(b) of *New York Dock*, 360 I.C.C. at 84, provides the following definition of a ''displaced employee':

(b) ''Displaced employee'' means an employee of the railroad who, as a result of a transaction is placed in a worse position with respect to his compensation and rules governing his working conditions.

NSR argues that claimants are ineligible for displacement allowances because they are not displaced employees under this provision, and that any displacement was voluntary in that they could have followed their work to its new location in Atlanta. TCU argues that claimants are displaced employees because their pre-transaction jobs were abolished and they were unable to exercise their seniority to obtain jobs with the same pay at their current locations. We seek comments on the proper interpretation of this provision.

Article I, Section 5(a)

TCU and NSR seem to agree that an employee may not receive a *dismissal* allowance if the employee refuses both to follow his or her work and to exercise any of his or her prior seniority rights at all.[7] TCU's position, however, is that *New York Dock* provides different rules for dismissed employees and displaced employees and that preserving seniority is an important consideration in the granting of displacement allowances. TCU relies on the following language in Article I, Section 5(a) of *New York Dock*, which provides in pertinent part as follows:

5. *Displacement allowances.*—(a) So long after a displaced employee's displacement as he is unable, *in the normal exercise of his seniority rights under existing agreements, rules and practices,* to obtain a position producing

[7] *See* TCU's Petition, at 3 and 10 n.4.

compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall, during his protected period, be paid a monthly displacement allowance. * * * [Emphasis added.]

Relying on the language emphasized above, TCU argues that an affected employee has a right to the ''normal exercise of his seniority rights'' and that the definition provision of Section 1(b) does not void this right.

TCU's approach raises various subsidiary issues. Is this provision, with its reference to the exercise of seniority rights, intended to trump the general definition of ''displaced employee'' in Section 1(b) in determining when displacement allowances may be awarded? What is meant by the ''normal exercise'' of seniority rights under ''existing agreements, rules and practices''? Does this require observance of *pre*-transaction agreements, rules and practices? Or does the language refer to post-transaction arrangements that are negotiated or arbitrated to carry out the transaction at issue?

In its submission to the panel at 15–16, NSR responds by citing the ICC's refusal to modify Article I, Section 5(a) of *New York Dock* so as to insert the following phrase between the words ''position'' and ''producing': '', which does not require a change in his place of residence,'' (see note below).[8] We ask for comments on the import of this item. Does it support the proposition that there is a duty to relocate in every situation, or does it establish merely that an employee must relocate only if it is necessary for the employee to find a new job ''in the normal exercise of his seniority rights under existing agreements''?

Article I, Section 5(b)

TCU also cites Article I, Section 5(b) of *New York Dock*, which provides a special restriction on the award of displacement allowances. Under this provision, an affected employee does not receive an allowance if he or she refuses to take another position that pays more and that does not require a change of residence.[9] This provision raises the question of why the drafters of *New York Dock* and its predecessors would have carved out such a narrow class of employees who would be ineligible for displacement allowances, specifically mandating that the promotion not require the employee to relocate, if they had intended to deny allowances to everyone who refuses to follow his or her work for whatever reason.

The Implementing Agreement

During the arbitration, TCU alleged that the Implementing Agreement ensures that employees assigned to the Atlanta Crew Management Center may exercise their pre-transaction seniority rights to avoid moving to Atlanta. TCU cited Article III of the Implementing Agreement. Also, Article II, Section 5 of the Implementing Agreement allows affected employees to bid for positions under ''former seniority roster(s).'' These provisions are silent, however, as to whether this means that employees may always exercise their seniority rights as they choose without risking loss of compensation under *New York Dock*. What is the effect of these provisions?

Merger Efficiencies and Effects on Employees Under New York Dock

NSR argues that TCU's approach would effectively negate many operating efficiencies of railroad consolidations. The carrier asserts that TCU's approach would create unprecedented chains of bumpings and displacements, with each employee in the chain receiving a displacement allowance.

We seek comments on NSR's position on this issue. Would TCU's approach actually create unusual chains of bumpings and displacements or a need for carriers to hire extra employees when affected employees displaced junior employees without relocating? Have such results been avoided in practice for various reasons?[10] Evidence pertaining to actual practice on NSR and throughout the rail industry would be helpful in answering these questions. Even if NSR's position is valid in other contexts, can NSR claim that the economies of the merger would be destroyed here in view of its apparent agreement in the Implementing Agreement that affected crew calling employees may exercise prior seniority rights?

Industry Practice Under New York Dock

TCU and BMWE submit statements from union officers alleging that common rail industry practice has been for carriers to grant displacement allowances to employees seeking to exercise their seniority to take lower paying positions in their pre-merger seniority districts. NSR does not dispute these statements insofar as they apply to practices of other railroads, but responds that its own practice has been to deny displacement allowances in this situation.

We seek more definitive information as to the extent to which carriers have granted displacement allowances to employees who have exercised their seniority to take lower paying positions rather than following their work to locations that would require them to move. Especially useful would be examples of implementing agreements, testimony about specific situations where displacement allowances may have been granted in this situation with or without the need for arbitration, and testimony from knowledgeable industry and labor officials about general practice.

Arbitration Precedent

In the case before us, employees affected by a transaction exercised their pre-transaction seniority rights to take lower paying jobs at their pre-transaction location rather than follow their work to a new location where they had no seniority rights before the transaction. Are precedents cited by the parties involving situations where the employees affected by a transaction declined the opportunity to move to accept jobs for which they did have seniority rights before the transaction useful with respect to our consideration of the present case?

Decided: December 8, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 99–32475 Filed 12–14–99; 8:45 am]

BILLING CODE 4915–00–P

[8] If this change had been adopted, Section 5(a) would have read as follows (proposed addition underscored): ''5. *Displacement allowances.*—(a) So long after a displaced employee's displacement as he is unable, in the normal exercise of his seniority rights under existing agreements, rules and practices, to obtain a position, *which does not require a change in his place of residence,* producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall, during his protected period, be paid a monthly displacement allowance. * * *'' [Emphasis added.]

The language was rejected by the ICC in the 1978 decision in *New York Dock*, 354 I.C.C. 399 (1978).

[9] The language of this provision does not ''deny'' a displacement allowance but provides that the employee will be treated as ''occupying the position he elects to decline.'' The effect on the employee appears to be the same (no payments).

[10] Has the effect on carriers typically been mitigated through practices such as the dismissal or relocation of junior employees who were unable to displace anyone, carrier elimination of the positions into which the employees chose to displace rather than move, or the creation of new positions to stop chains of bumpings?

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

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 Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application For Permit Under 26 U.S.C. Chapter 52, Manufacturer of Tobacco Products Importer of Tobacco Products, or Proprietor of Export Warehouse and Application For Amended Permit Under 26 U.S.C. 5712, Manufacturer of Tobacco Products Importer of Tobacco Products, or Proprietor of Export Warehouse.

DATES: Written comments should be received on or before February 14, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Cliff Mullen, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202) 927–8181.

SUPPLEMENTARY INFORMATION:

Title: Application For Permit Under 26 U.S.C. Chapter 52, Manufacturer of Tobacco Products Importer of Tobacco Products, or Proprietor of Export Warehouse and Application For Amended Permit Under 26 U.S.C. 5712, Manufacturer of Tobacco Products Importer of Tobacco Products, or Proprietor of Export Warehouse.

OMB Number: 1512–0398.

Form Number: ATF F 2093 (5200.3), ATF F 2098 (5200.16), ATF F 5230.4, ATF F 5230.5.

Abstract: The forms are used by tobacco industry members to obtain and amend permits necessary to engage in business as a manufacturer of tobacco products, importer of tobacco products, or proprietor of a export warehouse.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,903.

Estimated Time Per Respondent: 6 hours for all forms.

Estimated Total Annual Burden Hours: 3,567.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 9, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–32466 Filed 12–14–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the 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 Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Miscellaneous Requests and Notices for Distilled Spirits Plants.

DATES: Written comments should be received on or before February 14, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Steve Simon, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8183.

SUPPLEMENTARY INFORMATION:

Title: Miscellaneous Requests and Notices for Distilled Spirits Plants.

OMB Number: 1512–0206.

Form Number: ATF F 5110.41.

Abstract: The information provided by applicants assists ATF in determining eligibility and providing for registration. These eligibility requirements are for persons who wish to establish distilled spirits plant (DSP) operations. Regulations in 27 CFR 19.151 and 19.186 require that any person who intends to establish a DSP or succeed to the proprietorship of an existing DSP shall, before commencing operations, make application and receive notice of registration on ATF F 5110.41.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 328.

Estimated Time Per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 1,620.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 9, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–32467 Filed 12–14–99; 8:45 am]

BILLING CODE 4810–31–P

Corrections

Federal Register

Vol. 64, No. 240

Wednesday, December 15, 1999

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 DEFENSE

Department of the Army, Corps of Engineers

Availability of the Draft Environmental Impact Statement - Atlantic Coast of Long Island, From Fire Island Inlet to Montauk Point, NY, Reach 1 - Fire Island Inlet to Moriches Inlet; Interim Plan for Storm Damage Protection

Correction

In notice document 99–31556 beginning on page 68088 in the issue of Monday, December 6, 1999, make the following correction:

On page 68089, in the second column, in the 11th line, the phrase ''wildlife species that use these areas are those adapted to the high'' is removed.

[FR Doc. C9–31556 Filed 12–14–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Propsed Development of Corridor O, S.R. 0322, Section B02, in Centre and Clearfield Counties, PA

Correction

In notice document 99–31557 beginning on page 68089 in the issue of Monday, December 6, 1999, make the following correction:

On page 68090, in the third column, beginning in the eighth line, in paragraph (3), ''improvement of'' should read ''improvement of the highway corridor and development of''.

[FR Doc. C9–31557 Filed 12–14–99; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80, 85, and 86

[AMS-FRL-6337-3]

RIN 2060-AI23

Control of Air Pollution from New Motor Vehicles: Proposed Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements

Correction

In proposed rule document 99–11384 beginning on page 26004 in the issue of Thursday, May 13, 1999, please make the following corrections:

1. On page 26036, in the third column, under number ''4.'' in the second paragraph ''*a. Basic Exhaust Emission Standards and ''Bin'' Structure*'', the reference to footnote 37 and text of footnote 37 should read ''For technology harmonization purposes, our proposed emission bins include all of those adopted in California's LEV II program.[37]''

2. On page 26037, in the second column, remove the extra text at the top of the page ''adopted in California's LEV II program.[37]''

3. On page 26038, in the first column, under the heading ''*i. Primary Phase-In Schedule*'' in the second paragraph, in the third line, the reference to footnote 38 and the text for footnote 38 should read ''fraction of their U.S. sales [38] met Tier 2''.

[FR Doc. C9–11384 Filed 12–14–99; 8:45 am]

BILLING CODE 1505–01–D

[37] EPA's current standards for Clean Fuel Vehicles are less stringent than the proposed Tier 2 standards. See 40 CFR 88.104–94. The Tier 2 standards would supercede the current CFV standards, and, if EPA adopts the standards proposed today, the Agency intends to undertake a rulemaking to revise the CFV standards accordingly.

[38] For Tier 2 vehicles (and for interim vehicles), the term ''U.S. sales'' means, for a given model year, those sales in states other than California and any states that have adopted the California program.

federal register

Wednesday
December 15, 1999

Part II

Department of Agriculture

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1980 and 3555

Reengineering of the Section 502 Guaranteed Rural Housing (GRH) Program; Proposed Rule

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1980 and 3555

RIN 0575–AC18

Reengineering of the Section 502 Guaranteed Rural Housing (GRH) Program

AGENCY: Rural Housing Service, Rural Business Cooperative Service, Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Housing Service proposes to streamline and reengineer its regulations for the administration of its Guaranteed Rural Housing (GRH) Program. This action is taken to reduce regulations, improve customer service, and improve the Agency's ability to achieve greater efficiency, flexibility, and effectiveness in managing the program. The effect of this action is to provide better service, reduce program vulnerability, and reduce Federal regulations.

DATES: Written or e-mail comments must be received on or before February 14, 2000. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through February 14, 2000.

ADDRESSES: Submit written comments via the U.S. Postal Service, in duplicate, to the Regulations and Paperwork Management Branch, Attention: Tracy Gillin, Rural Development, U.S. Department of Agriculture, Stop 0742, 1400 Independence Avenue, S.W., Washington, DC 20250–0742. Submit written comments via Federal Express Mail, in duplicate, to the Regulations and Paperwork Management Branch, Attention: Tracy Gillin, USDA—Rural Development, 3rd Floor, 300 E. St., SW., Washington, DC 20546. Also, comments may be submitted via the Internet by addressing them to ''comments@rus.usda.gov'' and must contain the word ''GRH'' in the subject line. All comments will be available for public inspection during regular work hours at the 300 E. St., SW. address listed above.

FOR FURTHER INFORMATION CONTACT: Dean Daetwyler, Senior Loan Specialist, Single Family Housing Guaranteed Loan Division, RHS, Stop 0784, Room 2250, South Agriculture Building, 1400 Independence Avenue, S.W., Washington, DC 20250, telephone (202) 720–1480.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) Unless otherwise specifically provided, all State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; (3) administrative proceedings of the Rural Housing Service (RHS) and the National Appeals Division (7 CFR part 11) must be exhausted before bringing suit.

The Agency is making regulatory improvements to a more seasoned loan program and is eliminating unnecessary administrative matters from the CFR. The Agency is also developing a customer and user friendly handbook which will clarify the regulation and provide clear and definitive guidance for program beneficiaries. These actions will not only benefit the Agency, but also participating lenders, their agents, and potential homeowners.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

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

National Partnership for Reinventing Government

This regulatory action is being taken as part of the National Partnership for Reinventing Government (NPR) to reduce and eliminate unnecessary regulations and improve those that remain in force. Currently, the administration of the GRH program is guided by a regulation totaling 36 pages in the Code of Federal Regulations (CFR). The Agency has committed itself to meet the true spirit and intent of NPR and has undertaken a massive effort to completely reinvent and reengineer its regulatory process. In the new rule, administrative matters have been eliminated and remaining text has been completely revised to be consistent, simple, and clear. The Agency will publish a handbook to provide lenders, servicers, and field staff with the administrative guidance needed to effectively and efficiently administer the program. The handbook will not be published in the **Federal Register** but will be available upon request to the public. The Agency estimates the final rule will cover approximately 23 pages in the CFR, for a 36 percent reduction in published material.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' It is the determination of the Agency that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, neither an Environmental Assessment nor an Environmental Impact Statement is required.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a number of small entities. The Agency does not regulate small entities through the GRH program. The lender makes the loan to the applicant and the Agency guarantees the loan against potential loss providing the loan meets certain conditions. Requirements of the lenders are consistent with industry standards.

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under Number 10.410, Very-low to Moderate Income Housing Loans (Section 502 Rural Housing Loans).

Intergovernmental Consultation

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. (See the Notice related to 7 CFR part 3015, subpart V, at 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985).

Implementation Proposal

When the Agency publishes this proposed rule in final, it will remove 7 CFR part 1980, subpart D, ''Rural Housing Loans,'' from the CFR.

After the effective date of the final rule, the Single Family Housing Guaranteed Rural Housing program will be guided by 7 CFR part 3555. All provisions of the regulation will be effective 30 days after publication of the Final Rule except for the requirement for Homeownership Education which will take effect 6 months after the publication of the Final Rule.

The handbook will provide lenders, servicers, and field personnel with the administrative guidance needed to effectively and efficiently administer the program.

Background Information

On April 17, 1991, the Agency first published a final rule (56 FR 15748–81) implementing the Guaranteed Rural Housing program. The program was authorized under the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625).

After completing notice and comment rulemaking procedures, the Agency published another final rule on May 22, 1995, incorporating needed changes to encourage greater program participation, make the program more user friendly, and improve the success of the program.

Now that the program has been in effect for several years, the Agency is able to better reflect on the effectiveness and efficiencies of the GRH program and recognizes the need to focus on making the program even more effective, streamline processes, reduce costs to the taxpayer, and increase the level of customer service.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the Agency will seek Office of Management and Budget (OMB) approval of reporting and recordkeeping requirements contained in this regulation.

Guaranteed Rural Housing (GRH) loans are made by private lenders to individuals and households for the purpose of acquiring or constructing a single family residence in a rural area. Eligibility for this program includes low and moderate income families or persons whose income does not exceed 115 percent of the median income for the area, as determined by the Secretary.

The information requested by the Agency includes borrower financial information such as household income, assets and liabilities, and monthly expenses. All information collected is vital for the Agency to determine if borrowers qualify for and assure they receive all assistance for which they are eligible. Information requested on lenders is required to ensure that lenders are eligible to participate in the GRH program. Lender requirements are in compliance with OMB Circular A–129.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 25 minutes per response.

Respondents: Individuals or households and Business or other non-profit.

Estimated number of respondents: 44,830.

Estimated Number of Responses per Respondent: 5.68

Estimated Total Annual Burden on Respondents: 89,849 hours.

The GRH loan program has grown from a $100 million program in 1991 to its current funding level of $3 billion. Both the number of borrowers served and the number of lenders participating have increased since the program's inception. The reporting burden has increased consistent with the growth of the program; however, the cost to the consumer has been reduced by 6% since 1998 and dovetails an 11% reduction in reporting burden from 1995.

Copies of this information collection can be obtained from Tracy Gillin, Regulations and Paperwork Management Branch, Support Services Division, Rural Development, at (202) 692–0039.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of 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.

All responses with regard to paperwork burden will be summarized, included in the request for OMB approval, and will be a matter of public record. Please send written comments on the information collection aspect of the rule to the Desk Officer for Agriculture, Office of Information Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Tracy Gillin, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW, Washington, DC 20250–0742. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this rule.

Public Burden in the Handbook

The Agency is currently developing the proposed Handbook while aggressively analyzing all existing burden imposed upon the public to obtain and retain guaranteed single family housing program assistance.

The proposed Handbook will be available for public comment with regard only to its information collection requirements on or about March 1, 2000. The Agency will publish a Notice in the **Federal Register**, with a 60 day comment period, when the Handbook is available with its specific information collection requirements.

Summary of Enhancements To Improve Program Success

The major changes to enhance the Guaranteed Rural Housing Program are discussed below in general order of appearance in the regulation, not necessarily based on order of importance.

Subpart A—General

The definition section will be expanded to clarify terms used in the regulation. The definition of ''qualified alien'' will be revised in accordance with the definition provided in section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. 104–193. Section 402 of PRWORA provides that an alien who is not a ''qualified alien'' is not eligible for Federal public benefit. Section 401 of Act, in part, provides an exception for non-qualified aliens who were receiving assistance at the time of enactment under any program under title V of the Housing Act of 1949. The Agency has determined that guaranteed single family housing loans are a Federal benefit generally unavailable to non-qualified aliens. If a non-qualified alien had received a guaranteed single

family housing loan prior to the enactment of the Act, however, the Agency would continue to honor the guarantee and service the loan in accordance with the proposed rule. The Act also precludes qualified aliens from ''federal means tested public benefits'' for five years after they become qualified aliens. The Agency, however, considers the guaranteed single family housing loan program to be a discretionary, rather than a mandatory, assistance program that does not constitute a ''federal means-tested public benefit'' subject to this further restriction.

The definition of ''Veteran's preference'' has been updated to include Persian War era veterans in accordance with section 101 of title 38, as amended by the Persian Gulf War Veterans' Benefits Act of 1991, Pub. L. 102–25.

Most existing definitions have minor editorial revisions, but are not substantially revised.

Subpart B—Lender Participation

The section on lender participation was modified to provide additional guidance on how to become an approved Agency lender. The proposed regulation clarifies that a lender approved as a supervised or nonsupervised mortgagee by the United States Department of Housing and Urban Development (HUD), must also have direct endorsement authority from HUD for the submission of applications for Federal Mortgage Insurance to be eligible as an Agency approved lender.

The proposed regulation further clarifies that a lender approved as a supervised or nonsupervised mortgagee by the United States Department of Veterans Affairs (VA), must also be authorized to close loans on an Automatic Basis, as prescribed by VA, to be eligible as an Agency approved lender. These VA lenders have staff underwriters and have proven that they are capable of approving and closing loans per required guidelines. The application process for all lenders will be streamlined, and the Agency and its customers will realize improved loan quality.

Lenders who do not meet the requirements to become an approved Agency lender under the proposed regulation, may still be able to participate as a broker or correspondent mortgagee by processing loans through an Agency-approved lender. These lenders must submit loans through an approved Agency lender who will be responsible for underwriting the loan and ensuring program requirements are met. The guarantee will be issued in the name of the approved lender.

The Agency proposes to include other Federally supervised lenders, including those who are members of the Federal Reserve System, and those supervised by the Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), or Office of the Thrift Supervision, as eligible lenders. These lenders will be required to provide documentation of their ability to process, underwrite and service single family loans to become an approved Agency lender. The Agency will assume that lenders approved under other Federal programs have the ability to originate and service single family housing loans.

Reporting requirements by lenders and their agents have been moved to the program participation section of the proposed regulation. This section was streamlined and contains only policy dealing with reporting to the Agency by lenders and their agents.

The Agency further proposes to require approved lenders to maintain a fidelity and omissions policy, listing the Agency as the loss payee, with a copy provided to the Agency. This will protect the Agency against the potential for fraud and mistakes made by the lender.

The Agency is also considering requiring in the final rule that approved lenders have computer systems that comply with year 2000 technology. The Agency is specifically interested in comments on such an eligibility requirement, the potential vulnerability to the servicing of a guaranteed portfolio with systems that are not year 2000 compliant, the potential vulnerability to the Agency, and the requirement's impact on lenders participation in the program.

Subpart C—Loan Requirements

Interest Rate

Agency regulations currently include a maximum interest rate which a lender can charge GRH customers. The maximum rate authorized is the greater of the rate for loans guaranteed by VA or the current Fannie Mae rate, described as the Fannie Mae 90-day Actual/Actual yield for a 30 year fixed rate conventional mortgage loan plus 60 basis points.

Lenders generally utilize the VA rate as it is higher than the Fannie Mae rate and allows a lender to adequately price the product. Lenders who do not offer loans guaranteed by VA generally do not participate in the GRH program since 60 basis points over the Fannie Mae rate does not adequately price this mortgage product. The Agency continues to receive comments that the current regulatory standards are not feasible. Participating lenders contend that the mortgage market is so competitive, that the customer receives a more favorable interest rate than that established in our regulations making the limit unnecessary. In addition, the process is burdensome to lenders and the Agency to verify the Fannie Mae rate each time a loan is presented for guarantee. The Agency agrees that competitive forces in the marketplace help ensure that our customers receive the best interest rate. However, the Agency is concerned that in very rural markets, where there is not sufficient competition, that rural families may be subjected to higher interest rates than if no maximum were prescribed in GRH regulations.

Section 502(h)(6) of the Housing Act of 1949, as amended, requires the interest rate for guaranteed loans to be fixed over the term of the loan and not exceed the rate for loans guaranteed under 38 U.S.C. chapter 37 (Housing and Small Business Loans) or comparable loans in the area that are not guaranteed. At this time, the interest rate for loans made under 38 U.S.C. chapter 37 is a negotiated rate of interest with no maximum limitation. The rate is negotiated between the lender and borrower. In most areas, competition in the mortgage industry ensures that loan customers receive the lowest possible interest rate. However, in rural areas where there is little or no competition, and no comparable loans in the area which are not guaranteed, the Agency believes that an interest rate cap is necessary to ensure that our customers are not charged an excessive rate of interest. Therefore, the Agency is proposing to continue with a maximum interest rate for the GRH program. The rate cap will be set so as not to impact or impede upon lender participation in areas where competition exists; however, will ensure that customers in other areas are not subject to higher rates than should be offered for this mortgage product. The maximum allowable interest rate will be based upon current market factors and established with sufficient flexibility so that lenders can adequately price this mortgage product. The Agency intends to publish the rate by notice in the **Federal Register**. This will provide the Agency with flexibility to change the rate quickly if an adjustment were necessary to react to changes in market conditions. If the rate were included in the rule, it would take approximately a year to make any revisions to the rate. This timeframe could have an adverse affect on the delivery of GRH assistance. For example, if a higher rate were

necessary, lenders would not offer this mortgage product and homeownership opportunities for many rural families would be halted until the Agency could promulgate another rule. Conversely, if the market becomes so competitive that a lower rate were appropriate, rural families in many remote rural areas without adequate market competition could be faced with higher than necessary interest rates. At this time, if the Agency were to establish a maximum GRH interest rate, it would be no more than 125 basis points over the Fannie Mae 90-day Actual/Actual yield requirements, rounded to the nearest eighth of a percent.

The Agency is particularly interested in comments regarding this section. The Agency recognizes in order to attract and maintain lenders who will provide homeownership opportunities for low- and moderate income families in rural America, flexibility and simplicity is needed. However, the Agency still has a responsibility to ensure that its customers are treated equitably and not subject to interest rates that are excessive because market competition does not exist. The lowest possible interest rate helps to ensure the success of the homeowner and reduces risks to both the Agency and Lender. We believe the proposed language meets these objectives and we encourage suggestions or alternative methods to meet these goals.

Interest Assistance

The proposed regulation more clearly defines the eligibility criteria for existing borrowers with subsidized guaranteed loans approved between April 17, 1991, and September 30, 1991. The Agency proposes no change from the current regulation which provides that a customer should contact their lender when they have had a $100 monthly increase in household income. The Agency has considered changing this policy to a 10% increase in household income similar to our direct loan program. However, lenders and loan servicers have stated that since so few interest assistance accounts exist such a minor change would be more confusing than beneficial. The Agency is particularly interested in comments regarding this section and whether the current policy should be continued or a ''10% change'' policy would benefit lenders and homeowners. A chart is included in the regulation to be used to determine the amount of interest assistance paid by the Government and the amount of the borrower's payment. The chart, which is currently Exhibit D of the existing regulation, was expanded by adding floor rate percentages for borrowers whose income is between 80% and 115% of the median income.

The Agency currently pays a fee to the lender for processing an Interest Assistance Agreement renewal. The amount of the fee will be included in the handbook and the Agency's annual funding notice published in the **Federal Register** so that the Agency can make changes to the fee so as to keep up with costs in accordance with industry market factors.

Recapture

Recapture is defined as the amount of interest assistance to be repaid the Agency when the borrower transfers title or ceases to occupy the property. The Agency currently refers to recapture as ''Equity Sharing'' but will change the term to ''Recapture'' in the proposed regulation. The recapture formula has been changed to limit recapture to 50 percent of value appreciation or the amount of payment assistance received, whichever is less. Currently, the Agency can recapture the entire amount of subsidy granted to a borrower up to the value of the property. By changing the recapture formula, the Agency will be able to recognize improvements the customer made to the property, thereby providing the customer with incentive to maintain and improve their home without losing all of their equity.

The circumstances when borrowers are required to repay payment assistance have been clarified, including situations involving an assumption of a guaranteed loan.

Application for and Issuance of the Loan Note Guarantee

The Agency has changed the guarantee fee charged to the Lender from 1 percent of 90 percent of the principal amount advanced (.9 percent of the loan amount) to 1 percent of the full amount of the loan (1 percent of the loan amount). This change will improve consistency with industry standards and will assist the Agency in lowering the subsidy cost of the program.

Subpart D—Underwriting the Applicant

Eligible Applicant

Current Agency regulations preclude the eligibility of current homeowners for the GRH program unless their current home is deficient. This policy was adopted when the GRH program was first authorized and funds were limited. The policy has precluded many rural families from relocating or upgrading their current housing. The Agency is now proposing to eliminate the requirement that the applicant's current home must be deficient to qualify for a GRH loan. This will expand the eligibility of current homeowners and allow these potential customers to sell their current home and upgrade their housing. These existing homes will then provide homeownership opportunities for many other rural families, especially those in areas where housing is limited. Since the Agency does not communicate directly with many of the potential program customers, the Agency is interested in knowing if the proposed change in regulations will have a positive impact on rural homeownership. As such, the Agency is particularly interested in receiving comments on this issue.

Credit Qualifications

Credit qualifications will be revised to improve clarity and further define what constitutes an unacceptable credit history. This action will make the GRH program more consistent with the direct program and with industry standards.

- Incidents of more than one payment being 30 days or more late within the last 12 months has been changed to incidents of 3 or more payments late within the last 12 months.
- Incidents of rent payments being paid 30 days or more late within the last three years has been changed to incidents of rent payments being paid 30 days or more late within the last two years.
- Incidents where a foreclosure has been completed within the last 36 months has been adopted as an indicator of unacceptable credit. Previously, foreclosures had been listed as a category not to be considered as unacceptable credit, provided that the foreclosure was completed 12 months before the date of an application. The timeframe acceptable to the Agency for prior foreclosure incidents was increased from 12 months to 36 months due to risk associated with applicants with this type of credit history.
- The Agency has revised the section dealing with collection accounts by adding that if the collection account was paid in full within the last six months, it is considered an indicator of unacceptable credit. The purpose of this change is to discourage applicants from paying off collection accounts at the time of application only in order to qualify for Agency assistance.
- For non-Agency debts written off within the last 36 months, the Agency added the language ''unless the account was paid in full at least 12 months ago.'' The purpose of this change was to discourage applicants paying in full debts previously written off only in order to qualify for Agency assistance.

The provision, under the current regulation, stating that ''No History'' of credit transactions is an acceptable credit history, has been deleted from the proposed regulation. The Agency feels that a lack of credit history should not automatically be considered acceptable credit. A recent study indicated that the highest delinquency rate in the first year of homeownership was attributed to customers who had no credit history prior to obtaining an Agency loan. This was particularly evident in customers who had resided with family prior to obtaining a mortgage loan and had no credit experience on their own. Based upon this study, the Agency does not believe that a lender evaluating an application from a family who has no experience in paying financial obligations can document that the customer has the capacity to repay the proposed loan. The handbook will clarify that ''no credit history'' on a credit report will not automatically be a reason to deny a loan since many creditors, such as landlords, utility companies, small department stores, and doctors, do not report to credit repositories. Detailed guidance concerning the evaluation of credit will be given to lenders in the handbook. The Agency feels that changes to the credit requirements and guidelines will assist lenders in evaluating applicants, help to ensure the success of the customer, and reduce risks to the Agency.

The provision to allow a lender to consider mitigating circumstances to establish a borrower's intent for good credit will be amended to be more consistent with the direct single family housing loan program and the private mortgage industry. Such flexibility will be added to cover the situation where a loan will significantly reduce the applicant's shelter costs and enhance debt repayment ability. The Agency hopes to benefit otherwise eligible applicants who have adverse credit due to high current shelter costs. The provision also will specify that mitigating circumstances will not be considered to provide loan assistance when the applicant is delinquent on a Federal debt or other Government outstanding judgment against the applicant in a Federal court, other than the United States Tax Court. These exceptions are based on statutory prohibitions in 31 U.S.C. 3720B and 28 U.S.C. 3201(e), respectively. The current provision for consideration of an applicant's justifiable dispute concerning goods or services as a mitigating circumstance also will be deleted as unnecessary. The broad mitigating factor for circumstances of a temporary nature would cover this situation. The Agency is particularly interested in receiving comments on this issue, especially as to the parameters of when adverse credit may be mitigated.

Homeownership Education

The Agency is adopting a mandatory homeownership education requirement for first time homebuyers who have not previously owned a home, as authorized by 502(e)(4) of title V of the Housing Act of 1949. This will ensure that first-time homebuyers are adequately prepared for the obligations of homeownership. The Agency feels that this requirement will assist customers in understanding the responsibilities and demands of homeownership.

The Agency strongly believes that homeownership education is necessary for all first time homeowners. This is consistent with the direction of the lending industry and helps ensure the success of the homeowner and program while having the added benefit of minimizing losses to the Government and lender. However, the Agency recognizes the impact of this requirement upon the lending community and recognizes that in some cases, there may be a cost for this service and that the cost will generally be paid by the potential homeowner. The cost of homeownership education is an eligible loan purpose and can be included in the loan provided the appraised value of the property supports the inclusion of this fee. Alternatively, the cost may be paid directly by the applicant.

The Agency intends to establish minimum parameters for homeownership education in accordance with the standards currently being developed by the American Homeowner Education and Counseling Institute. The Agency believes there are two methods to ensure that homeownership education is provided. One method would be for the lender to maintain a list of acceptable providers of homeownership education and provide such list to potential clients. The lender would be responsible for ensuring that the providers met Agency requirements. A certification from the service provider would be required before the loan could be approved. An alternative method would be for the lender to provide the service, and if any costs are involved, each applicant would be charged the same fee. The Agency is particularly interested in comments on the parameters of an acceptable homeownership education program, whether one or both options should be offered to lenders, alternative methods, and potential costs of such service. This rule will be amended to incorporate the standards as established.

Net Family Assets

A definition has been added for net family assets. Clarification as to which assets must be included in the calculation of annual income as well as assets which are not included in the calculation are included in the proposed regulation. The requirements of the Agency are consistent with the requirement of the U.S. Department of Housing and Urban Development in accordance with 24 CFR 5.603.

Subpart E—Underwriting the Property

Ownership Requirements

The Agency proposes to increase the unexpired term on a secured leasehold interest from 40 years to 45 years before a guarantee will be considered. In the event of a foreclosure, leasehold interests must also be fully marketable in the area. The requirement for a lease to have an unexpired term of one and one-half times the term of the mortgage is considered to be industry standard, so that, in the event of a foreclosure, the loan will be fully marketable. This requirement helps to protect the lender as well as the Government. Should the term of the lease be less than the term of a 30 year mortgage, the value of the property would not be fully marketable and the value of the property would be decreased, thereby increasing the potential amount of a loss. Certain exceptions are provided on properties located on American Indian restricted lands due to the unique nature of securing loans in these areas.

Special Requirements for Condominiums

As the Agency does not approve subdivisions and condominiums, the proposed regulation stipulates that condominiums must be in a project approved or accepted by HUD, VA, Fannie Mae, or the Federal Home Loan Mortgage Corporation (Freddie Mac).

Special Requirements for Community Trust Lands

Language has been added to the proposed regulation outlining the requirements for guaranteed loans for dwellings on land owned by a community land trust. The Agency may guarantee a loan in these areas provided that any restrictions imposed by the community land trust are first reviewed and accepted by the Agency and that the requirements imposed by the community land trust automatically terminate upon foreclosure or

acceptance by the lender of a deed in lieu of foreclosure case. The Agency is concerned about possible discriminating language in community land trust restrictions. Current regulations do not address community land trusts.

Special Requirements for Planned Unit Developments

Clarification on loans for dwellings in Planned Unit Developments (PUD) have been added to the regulation. Such loans may be guaranteed if PUD meets all of the Agency's requirements and those of HUD, VA, Fannie Mae, or Freddie Mac. This issue is not addressed in the current regulation.

Special Requirements for Manufactured Homes

The Agency added a provision requiring the dealer-contractor to provide a warranty in accordance with 7 CFR part 1924, subpart A, identifying the unit by serial number. The dealer-contractor is also required to certify that the unit has not sustained any hidden damage during transportation and that the permanent foundation complies with plans and specifications. If the unit was manufactured in separate sections, the dealer-contractor must certify that the sections were properly joined and sealed per manufacturer's specifications. The dealer-contractor must also provide the applicant with a copy of all manufacturer's warranties. These provisions are similar to those in the direct 502 program and were added to protect the financial interests of the applicant, the lender, and the Government and to ensure that the dwelling is of acceptable quality.

To maintain consistency with the direct 502 program, the Agency will continue to finance only new manufactured homes that meet or exceed Agency thermal standards. The Agency has received comments regarding consideration of financing existing manufactured housing stock, not originally financed with an Agency loan. However, the Agency believes that cost to retrofit an existing manufactured home so it can meet Agency thermal standards is cost prohibitive and not in the best interest of the customer. The Agency is also concerned about other lender's experiences with higher losses on existing manufactured homes. Additionally, according to HUD research, as published in the ''Ninth Report to Congress on the Manufactured Housing Program,'' manufactured homes over a 10 year exposure period are 5 times more likely to suffer structural failure as compared to a conventionally built home. HUD is expected to begin a review of the manufactured construction code this year. After HUD completes this process and the Agency reviews its findings, the Agency will re-consider financing existing manufactured housing.

Subpart F—Regular Servicing

Servicing Responsibilities

The section on servicing has been expanded to include lender responsibilities. Language was added to allow the Agency to require a lender to transfer its loan servicing activities to another approved lender if the servicing lender fails to provide acceptable servicing.

Required Servicing Actions

The Agency wants to provide flexibility to lenders that do not have the capacity to escrow taxes and insurance. The Agency will allow these lenders the opportunity to submit a plan to the Agency for approval to ensure that the customer pays tax and insurance obligations. The lender, however, must accept ultimate responsibility for the payment of taxes and insurance which come due prior to liquidation of an account. This provision is intended to help expand the program into more rural areas with smaller lenders without escrow capabilities, while still protecting the borrower's interest.

A section on insurance has also been added and encompasses both the requirements for homeowners insurance and flood insurance on properties located in Special Flood Hazard Areas. This consolidated section on insurance eliminates the need for the current section of the regulation devoted to flood or mudslide hazard areas.

The Agency has added the requirement that the lender must notify a credit repository of each new guaranteed loan and must report to the credit repository all accounts that become more than 30 calendar days past due. This is consistent with industry standards. The current regulation only requires a lender to report a loan to a credit repository when payments become three payments delinquent and it does not require a lender to report new guaranteed loans.

Borrower Actions Requiring Lender Approval

Language has been added to allow a lender to consent to a lease of mineral rights as long as the security property remains suitable for a residence, the Government's interest will not be adversely affected, and Agency environmental requirements are met.

Additionally, the Agency proposes to allow a lender to consent to certain transactions affecting the security property such as the sale or exchange of a portion of the security property, granting of a right-of-way across the property, or granting a partial release of the security property provided the transaction meets certain conditions to protect the lender and the Government's interests.

Under the current regulation, mineral leases and partial releases were not addressed. Under the proposed regulation, guidance is provided on allowing mineral leases and partial releases. This will give the lender more flexibility in servicing it's guaranteed portfolio, while still protecting the Government's interest.

Transfer and Assumptions

The Agency has reorganized and clarified this section. A section on transfers, without triggering the due-on-sale clause, has been added to allow the transfer of property to a spouse or children not resulting from the death of a borrower, transfer to a relative, joint tenant, tenants by the entirety resulting from the death of a borrower, or transfer to an ex-spouse resulting from a divorce decree, legal separation agreement, or property settlement agreement. The addition of this section is in accordance with § 341 of the Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97–320).

Subpart G—Servicing Accounts With Repayment Problems

A section was added to the proposed regulation to clarify that lenders may enter into a forbearance agreement provided it includes a reasonable plan for bringing the account current.

The Agency eliminated the requirement for a lender to obtain prior Agency approval for protective advances. The Agency feels that lenders need the ability to immediately procure certain services to protect their interests as well as the interest of the Government. The time it takes a lender to obtain Agency approval for protective advances can increase exposure and could result in a higher cost to the Agency in the event of a loss. However, protective advances are to be used only to pay for emergency expenses necessary to protect the security property. Lenders will be allowed to provide a protective advance only to pay for emergency repairs needed to protect the security property only if the borrower is unable to secure an additional loan to pay these costs or if the borrower has abandoned the property. Additionally, a lender may advance funds to pay real estate taxes, local assessments, and hazard or flood

insurance premiums that are past due in order to protect the lender's interest. Only acceptable protective advances will be eligible for loss claim reimbursement. Specific guidance will be provided in the handbook to assist lenders in determining an acceptable protective advance.

Liquidation

A section on bankruptcy was added to inform lenders of the Agency's expectations in reasonably servicing an account in bankruptcy. The expectations of the Agency include: (a) The suspension of collection and foreclosure actions in accordance with the requirements of the Bankruptcy Code; and (b) when possible in a Chapter 7 bankruptcy, a reaffirmation agreement signed by the borrower and approved by the bankruptcy court prior to discharge, if the lender decides to continue with the borrower. Additionally, the lender may accept conveyance of the security property by the trustee in the bankruptcy if the bankruptcy court has approved the transaction and the lender will acquire title free and clear of all liens and encumbrances except the lender's liens.

The voluntary liquidation section has been enhanced to clarify that a lender may accept a request from a borrower to voluntarily liquidate the security property by way of refinancing or sale providing the price reflects at least the property's value as determined by a current market appraisal. The lender may also accept a deed in lieu of foreclosure unless the anticipated costs for selling the property, including any costs required to make the property salable, exceed the property's appraised value.

To ensure the Agency is in compliance with the Debt Collection Act and the Department of Treasury and Office of Management and Budget Circulars, a section was added to the proposed regulation to require the lender to report to the IRS and credit reporting agencies any debt that is settled through liquidation.

Subpart H—Collecting on the Guarantee

The section of the current regulation addressing loss payments has been broken down into several parts in order to clarify the Agency's policy on collection on the guarantee.

The Agency will no longer require lenders to submit a property disposition plan for approval prior to disposing of Real Estate Owned (REO) properties. However, the Agency will provide specific guidance in the handbook for disposition of REO property, sales price determinations, and price reductions. By providing clear guidance to lenders for REO property disposition, the Agency feels that the efficiency and timeliness of the loss claim process will be enhanced, which in turn will reduce loss claim costs. This will also reduce unnecessary paperwork burden on the public. The Agency will monitor lender REO property disposition performance during servicing reviews.

The Agency has added a section on net recovery value. The section explains the difference between actual net recovery value and anticipated net recovery value. The difference between these two concepts is important to the lender in filing a claim for a loss under the terms of the guarantee. If the property has been sold at foreclosure or out of the lender's inventory, actual net recovery value is determined. However, if the property remains in the lender's inventory, the anticipated net recovery value is used in the loss claim calculation.

Current regulations allow a lender up to 6 months from the date they acquired the property to sell the property from inventory. The date acquired is considered the date of the foreclosure sale and does not take into account any applicable redemption period. If the property remains unsold after 6 months from the date of the foreclosure, a lender is required to submit a loss claim based on a liquidation appraisal. The change to this requirement will allow a lender 90 days to market the property after any required redemption period. Redemption periods vary from State to State and on average are approximately 6 months in length. This change will allow lenders in all States equal time to dispose of REO property, as some States have laws which provide a redemption period to allow a homeowner to redeem their property after a foreclosure sale.

If the property is located on Native American Indian trust or restricted land, the lender must notify the Agency if the property has not sold within 12 months of the foreclosure sale or from the end of any applicable redemption period, whichever is later. This extended time frame allows the lender extra flexibility to dispose of the REO due to restriction, which must be addressed when such properties are acquired.

List of Subjects

7 CFR Part 1980

Home improvement, Loan Programs-Housing and community development, Mortgage insurance, Mortgages, Rural areas.

7 CFR Part 3555

Administrative practice and procedure, Conflict of interests, Credit, Environmental impact statements, Equal credit opportunity, Fair Housing, Flood insurance, Home improvement, Housing, Loan programs-Housing and community development, Low and moderate income housing, Manufactured homes, Mortgage insurance, Mortgages, Rural areas, Subsidies.

For the reasons set forth in the preamble, Chapters XVIII and XXXV, title 7, Code of Federal Regulations are proposed to be amended as follows:

CHAPTER XVIII—RURAL HOUSING SERVICE, RURAL BUSINESS-COOPERATIVE SERVICE, RURAL UTILITIES SERVICE, AND FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE

PART 1980—GENERAL

1. The authority citation for part 1980 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart D—[Removed and Reserved]

2. Subpart D of part 1980 is removed and reserved.

CHAPTER XXXV—RURAL HOUSING SERVICE, DEPARTMENT OF AGRICULTURE

3. Part 3555, consisting of subparts A through H, is added to read as follows:

PART 3555—GUARANTEED RURAL HOUSING LOAN PROGRAM

Subpart A—General

Sec.
3555.1 Applicability.
3555.2 Purpose.
3555.3 Civil Rights.
3555.4 Mediation and appeals.
3555.5 Environmental requirements.
3555.6 State and local law.
3555.7 Exception authority.
3555.8 Conflict of interest.
3555.9 Enforcement.
3555.10 Definitions.
3555.11–3555.50 [Reserved]

Subpart B—Lender Participation

3555.51 Lender eligibility.
3555.52 Lender approval.
3555.53 Contracting for loan origination.
3555.54 Sale of loans to approved lenders.
3555.55–3555.100 [Reserved]

Subpart C—Loan Requirements

3555.101 Loan purposes.
3555.102 Loan restrictions.
3555.103 Maximum loan amount.
3555.104 Loan terms.
3555.105 Interest assistance.
3555.106 Recapture.
3555.107 Application for and issuance of the loan guarantee.
3555.108–3555.150 [Reserved]

Subpart D—Underwriting the Applicant

3555.151 Eligibility requirements.
3555.152 Calculation of income and assets.
3555.153–3555.200 [Reserved]

Subpart E—Underwriting the Property

3555.201 Site requirements.
3555.202 Dwelling requirements.
3555.203 Ownership requirements.
3555.204 Security requirements.
3555.205 Special requirements for condominiums.
3555.206 Special requirements for community land trusts.
3555.207 Special requirements for Planned Unit Developments.
3555.208 Special requirements for manufactured homes.
3555.209–3555.250 [Reserved]

Subpart F—Regular Servicing

3555.251 Servicing responsibility.
3555.252 Required servicing actions.
3555.253 Late payment charges.
3555.254 Final payments.
3555.255 Borrower actions requiring lender approval.
3555.256 Transfer and assumptions.
3555.257 Unauthorized assistance.
3555.258–3555.300 [Reserved]

Subpart G—Servicing Accounts With Repayment Problems

3555.301 General policy.
3555.302 Forbearance.
3555.303 Protective advances.
3555.304 Reamortization.
3555.305 Liquidation.
3555.306–3555.350 [Reserved]

Subpart H—Collecting on the Guarantee

3555.351 Loan guarantee limits.
3555.352 Loss covered by the guarantee.
3555.353 Net recovery value.
3555.354 Loss claim procedures.
3555.355 Reducing or denying the claim.
3555.356 Future recovery.
3555.357–3555.400 [Reserved]

Authority: 5 U.S.C. 301; 42 U.S.C. 1471 *et seq.*

Subpart A—General

§ 3555.1 Applicability.

This part sets forth policies for the Guaranteed Rural Housing Loan Program operated by the Rural Housing Service. It addresses the requirements of section 502(h) of the Housing Act of 1949, as amended, and includes policies regarding originating, servicing, holding and liquidating guaranteed loans. Any provision regarding the expenditure of funds under this part is contingent upon the availability of funds.

§ 3555.2 Purpose.

The purpose of the guaranteed rural housing loan program is to provide low- and moderate-income persons who will live in rural areas with an opportunity to own adequate but modest, decent, safe, and sanitary dwellings and related facilities. The program offers persons who do not currently own adequate housing the opportunity to acquire, build, rehabilitate, improve, or relocate dwellings in rural areas. The program provides guarantees only for qualified loans that a lender would not make without a guarantee.

§ 3555.3 Civil rights.

The Agency, lenders, and their agents must administer the program fairly, and in accordance with both the letter and the spirit of all equal opportunity, equal credit opportunity and fair housing legislation, and applicable executive orders. Loan guarantees, services, and benefits provided under this part shall not be denied to any person based on race, color, national origin, sex, religion, marital status, familial status, age (provided the applicant has the capacity to enter into a binding contract), handicap, receipt of income from public assistance, sexual orientation, or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act (15 U.S.C. 1601 *et seq.*). All activities under this part shall be accomplished in accordance with the Fair Housing Act (42 U.S.C. 3601–3620), and Executive Order 11063 as amended by Executive Order 12259, as applicable. The Agency's civil rights compliance requirements are provided in 7 CFR 1901, subpart E.

§ 3555.4 Mediation and appeals.

Whenever the Agency makes a decision that will adversely affect a participant, the participant may proceed with alternative dispute resolution including mediation and a USDA National Appeals Division hearing in accordance with part 11 of this title. The participant also may request an informal review of the situation with the decision maker. Except when the adverse decision applies to a loss claim, the applicant or borrower and the lender must participate jointly in the appeal process. Decisions made by the lender cannot be appealed unless concurrence by the Agency was required by this subpart and obtained by the lender.

§ 3555.5 Environmental requirements.

(a) *Policy.* The Agency will consider environmental quality as equal with economic, social, and other relevant factors in program development and decision-making processes. The Agency will take into account potential environmental impacts of proposed projects by working with applicants, other Federal agencies, American Indian tribes, State and local governments, and interested citizens and organizations in order to formulate actions that advance the program's goals in a manner that will protect, enhance, and restore environmental quality.

(b) *Regulatory references.* Loan processing and servicing actions under this part will be completed in accordance with the requirements of part 1940, subpart G of this title, which addresses environmental requirements; part 1924, subpart A of this title, which addresses lead-based paint requirements; and part 1806, subpart B of this title, which addresses flood insurance.

(c) *Agency responsibilities.* Responsibility for compliance with the National Environmental Policy Act and with the Agency's environmental regulations rests with the Agency, not the guaranteed lender.

(d) *Lender and applicant responsibilities.* (1) On an as needed basis, lenders and applicants will assist the Agency in obtaining such information as the Agency needs to complete its environmental review and to cooperate in the resolution of environmental problems.

(2) Lenders will become familiar with Agency environmental requirements, so they can advise applicants and reduce the probability of unacceptable applications being submitted to the Agency.

(3) The applicant must obtain flood insurance offered under the National Flood Insurance Act of 1968 if the dwelling is located in an area identified by FEMA as having special flood hazards.

(4) The lender must determine whether the dwelling is located in a special flood hazard area, and if so, ensure that the borrower maintains acceptable flood insurance throughout the term of the loan.

§ 3555.6 State and local law.

Lenders will comply with applicable State and local laws and regulations, including the laws of American Indian tribes. Supplemental guidance will be issued in the case of any conflict with or significant differences from provisions of this part.

§ 3555.7 Exception authority.

The Administrator of the Agency, or a designee, may make an exception to any requirement or provision of this part or to address any omissions in this part, when the Administrator determines that application of the requirement or provision, or failure to take action in the case of an omission, would adversely affect the Government's interest.

§ 3555.8 Conflict of interest.

(a) *Applicant or borrower responsibility.* The applicant or

borrower must disclose to the lender any prohibited relationship or association with any Rural Development employee, and the lender must disclose that information to the Agency.

(b) *Lender responsibility.* The lender must disclose to the Agency any prohibited relationship or association it, or any of its employees, has with any Rural Development employee.

(c) *Prohibited relationships and associations.* Prohibited relationships and associations include the following:

(1) Immediate family members, including parents and children, whether related by blood or marriage, and any household residents;

(2) Close relatives, including grandmother, grandfather, aunt, uncle, sister, brother, niece, nephew, granddaughter, grandson, or first cousin, whether related by blood or marriage;

(3) Immediate working relationships, including coworkers in the same office, subordinates, and immediate supervisors; and

(4) Close business associations, including business partnerships, joint ventures, or closely-held corporations.

(d) *Result of disclosure.* Disclosure of prohibited relationships and associations under this section will not result in applicant, borrower or lender ineligibility. Disclosures may result in reassignment of Rural Development employees with regard to the loan guarantee in question so that no prohibited relationships or associations exist between the Rural Development employees responsible for loan guarantee transactions and lenders, borrowers, or applicants.

§ 3555.9 Enforcement.

The Agency will take such actions as are appropriate and necessary to enforce the provisions of these regulations. Such actions will include, but not be limited to, reduction of the loss claim payment; termination of the guarantee agreement or any loan servicing agreement; suspension and debarment of participation in this or other Agency programs; and any other appropriate administrative, civil, or criminal actions.

§ 3555.10 Definitions.

The definitions in this section apply to this part.

Acceleration. Demand for immediate repayment of the entire balance of a debt if the covenants in the promissory note, assumption agreement, or security instruments are breached.

Adjusted income. Income from all household members, which is used to determine whether an applicant is income-eligible for a guaranteed loan, or interest assistance, if applicable. Adjusted income provides for deductions to account for varying household circumstances and expenses. See § 3555.152 for a complete description of adjusted income.

Agency. The Rural Housing Service of the U.S. Department of Agriculture, or its successor agency, formerly the Rural Housing and Community Development Service, a successor agency to the Farmers Home Administration.

Agency employee. Any employee of the Rural Housing Service, or any employee of the Rural Development mission area who carries out section 502 guaranteed loan program functions.

Alien. See ''Qualified alien.''

American Indian Restricted Land. Land or any interest in land which is held by an individual American Indian or tribe, including any band, rancheria, colony, pueblo, group, community or nation of Indians or Alaska Natives, and is subject to Federal restrictions against alienation or encumbrance.

Amortized payment. Equal monthly payments under a fully amortized mortgage loan that provides for the scheduled payment of interest and principal over the term of the loan.

Annual income. The income of all household members from all sources except those listed in § 3555.152(b).

Applicant. An individual applying to a lender for a guaranteed loan.

Area Median Income. The median income in a specific locality; typically a County or Metropolitan Statistical Area (MSA) as determined by the Department of Housing and Urban Development

Assumption. The procedure whereby title to a security property is transferred to an eligible transferee who agrees to assume the obligations of the loan; however, the transferor remains liable.

Borrower. An individual who has received a loan guaranteed under the guaranteed rural housing loan program.

Community land trust. A private nonprofit community housing development organization that is established to acquire parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases.

Conditional commitment. The Agency's agreement that a proposed loan will be guaranteed if all conditions and requirements established by the Agency are met.

Condominium. A form of fee ownership of whole units or separate portions of multi-unit buildings under the laws of the State where the property is located which provides the mechanics and facilities for formal filing and recording of a divided interest in real property, where the division is vertical as well as horizontal. Fee ownership of the units in a multi-unit property and joint ownership of the common areas.

Dealer-contractor. A person, firm, partnership, or corporation capable of providing complete services for selling, servicing and developing sites for manufactured homes.

Debarment. An action taken under part 3017 of this title or title 48 of the Code of Federal Regulations to exclude a person or entity from participating in Federal programs.

Deficient housing. A dwelling that lacks complete plumbing; lacks adequate heating; is dilapidated or structurally unsound; has an overcrowding situation that will be corrected with loan funds; or that is otherwise uninhabitable, unsafe, or poses a health or environmental threat to the occupant or others.

Disability, person with. See ''Person with a disability.''

Dwelling. A house, manufactured home, or condominium unit, and related facilities, such as a garage or storage shed.

Elderly family. An elderly family consists of one of the following:

(1) A person who is the head, spouse, or sole member of a household and who is 62 years of age or older, or who is disabled, and is an applicant or borrower;

(2) Two or more persons who are living together, at least one of whom is age 62 or older, or disabled, and who is an applicant or borrower; or

(3) Where the deceased borrower or spouse in a household was at least 62 years old or disabled, the surviving household member shall continue to be classified as an elderly household for the purpose of determining adjusted income, even though the surviving members may not meet the definition of an elderly household on their own, provided:

(i) They occupied the dwelling with the deceased household member at the time of the death;

(ii) If one of the surviving household members is the spouse of the deceased household member, the surviving household shall be classified as an elderly family only until the remarriage or death of the surviving spouse; and

(iii) At the time of the death of the deceased household member, the dwelling was financed with a guaranteed Rural Housing loan.

Escrow account. An account to which the borrower contributes monthly payments to cover the anticipated costs of real estate taxes, hazard and flood insurance premiums, and other related costs.

Existing dwelling. A dwelling that is more than one year old, or less than one year old and covered by an approved ten-year warranty.

False information. For the purpose of this part only, information that the borrower or lender knew or should have known was incorrect and that was provided or omitted for the purpose of obtaining assistance.

FEMA. The United States Federal Emergency Management Agency.

FHA. The Federal Housing Administration of the United States Department of Housing and Urban Development.

First-time homebuyer. Individuals who meet any one of the following three criteria are considered first-time homebuyers.

(1) An individual who has had no ownership interest in a principal residence during the three-year period ending on the date of loan closing.

(2) An individual who is a displaced homemaker and who, except for owning a home with a spouse, has had no ownership interest in a principal residence during the three-year period ending on the date of loan closing. Displaced homemakers include any individual who is:

(i) An adult;

(ii) Unemployed or underemployed;

(iii) Experiencing difficulty in obtaining or upgrading employment; and

(iv) In recent years has worked primarily without remuneration to care for the home and family, but has not worked full-time, full-year in the labor force.

(3) An individual who is a single parent and who, except for owning a home with a spouse, has had no ownership interest in a principal residence during the three-year period ending on the date of loan closing. Single parents include any individual who is:

(i) Unmarried or legally separated from a spouse; and

(ii) Has custody or joint custody of one or more children, or is pregnant.

Floor interest rate. The rate of interest, determined at the time of loan closing, that the borrower would pay if the note were amortized at the rate corresponding to the borrower's income range as determined in accordance with § 3555.105(b).

Forbearance agreement. An agreement between the lender and the borrower providing for temporary suspension of payments or a repayment plan that calls for periodic payments of less than the normal monthly payment, periodic payments at different intervals, *etc.* to bring the account current.

Freddie Mac. Federal Home Loan Mortgage Corporation.

Full-time student. A person who carries at least the minimum number of credit hours considered to be full-time by the university, college, or vocational school in which the person is enrolled.

Funded buydown account. An escrow account funded by the lender, seller, or through a third party gift, from which monthly payments are released directly to the lender to reduce the amount of interest on a loan, thereby improving an applicant's repayment ability.

Guaranteed loan. A loan guaranteed under section 502 of the Housing Act of 1949. Under the guarantee, the owner of the loan note may be reimbursed for all or part of a loss incurred if a borrower defaults on a loan.

Household. All persons expected to be living in the dwelling as principal residence, except for live-in aides, foster children, and foster adults.

Housing Act of 1949. The Act which, in part, provides the authority for single family housing programs, codified at 42 U.S.C. 1471, *et seq.*

HUD. The United States Department of Housing and Urban Development.

Interest assistance. Agency assistance available to eligible borrowers that reduces the effective interest rate on the guaranteed loan.

IRS. The Internal Revenue Service of the United States Department of the Treasury.

Lender. The entity making, holding, or servicing a loan that is guaranteed under the provisions of this part.

Live-in aide. A person who lives with an elderly or disabled person and is essential to that person's care and well-being, not obligated for the person's support, and would not be living in the unit except to provide the support services.

Low-income. An adjusted income that is greater than the HUD established very low-income limit, but that does not exceed the HUD established low-income limit (generally 80 percent of median income adjusted for household size) for the county or Metropolitan Statistical Area where the property is or will be located.

Manufactured home. A structure that is built to Federally Manufactured Home Construction and Safety Standards and the Agency's Thermal Performance Standards. It is transportable in one or more sections, which in the traveling mode is ten-body feet (3.048 meters) or more in width, and when erected on site is 400 or more square feet (37.16 square meters), and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities. It is designed and constructed for permanent occupancy by a single family and contains permanent eating, cooking, sleeping, and sanitary facilities. The plumbing, heating, and electrical systems are contained in the structure. A permanent foundation is required.

Market value. The value of the property as determined by a current appraisal made in accordance with the Uniform Standards of Professional Appraisal Practices.

Median income. The area median income, adjusted for family size, as established by HUD.

Moderate income. An adjusted income that is greater than the HUD-established low-income limit, but that does not exceed 115 percent of median income adjusted for household size for the county or Metropolitan Statistical Area where the property is or will be located.

Modest housing. A property that is considered modest for the area, with a cost that does not exceed the applicable limit established under section 203 (b) of the National Housing Act (12 U.S.C. 1709). In addition, the property must not be designed for income-producing activities or have an in-ground swimming pool.

Mortgage. A form of security instrument or consensual lien on real property including a real estate mortgage and a deed of trust.

Mortgage Credit Certificates. A credit to reduce the applicant's Federal income tax liability, which improves an applicant's repayment ability.

Net family assets. The value of assets available to a household, as contained in § 3555.152(d).

Net recovery value. The amount available to apply to the outstanding principal balance after considering the value of the security property and other amounts recovered, and deducting the costs associated with liquidation, acquisition and sale of the property. Net recovery value is calculated differently depending on the type of disposition, as contained in § 3555.353.

New dwelling. A dwelling that is to be constructed, or an already-existing dwelling that is less than one year old and is not covered by an approved ten-year warranty.

Participant. For the purpose of appeals, a participant is any individual or entity that has applied for, or whose right to participate in or receive a payment, loan guarantee, or other benefit, is affected by an Agency decision and meets the definition of ''participant'' in § 11.1 of this title.

Person with a disability. Any person who has a physical or mental impairment that substantially limits one or more major life activities, including functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working, has a record of such an impairment, or is regarded as having such an impairment.

PITI ratio. The amount to be paid by the borrower for principal, interest, taxes, and insurance (PITI), divided by repayment income. This is often known as the ''front-end ratio.''

Planned Unit Development. For the purpose of this definition, a Condominium is not a Planned Unit Development (PUD). A PUD is a development that has all of the following characteristics:

(1) The individual unit owners own a parcel of land improved with a dwelling. This ownership is not in common with other unit owners;

(2) The development is administered by a homeowners association that owns and is obligated to maintain property and improvements within the development (for example, greenbelts, recreation facilities and parking areas) for the common use and benefit of the unit owners; and

(3) The unit owners have an automatic, nonseverable interest in the homeowners association and pay mandatory assessments.

Prior lien. A lien against the security property that is superior in right to the lender's debt instrument.

Property. The land, dwelling, and related facilities for which the applicant will use guaranteed funds.

Qualified alien. An alien who, at the time the alien applies for, receives, or attempts to receive Federal public benefit, in accordance with the Immigration and Nationality Act, is:

(1) An alien who is lawfully admitted for permanent residence;

(2) An alien who is granted asylum;

(3) A refugee who is admitted to the United States;

(4) An alien who is paroled into the United States for a period of at least 1 year;

(5) An alien whose deportation is being withheld; or

(6) An alien who is granted conditional entry prior to April 1, 1980.

Real estate taxes. Taxes and the annual portion of assessments estimated to be due and payable on the property.

Recapture. The amount of interest assistance to be repaid when the borrower transfers title or ceases to occupy the property.

Recipient. Any person or entity that receives benefits or assistance under the guaranteed loan program, including a lender that receives a loan guarantee, or a borrower who receives a guaranteed loan or interest assistance.

REO. (Real Estate Owned) Real estate that formerly served as security for a guaranteed loan and for which the lender holds title.

Repayment income. Used to determine whether an applicant has the ability to make monthly loan payments. Repayment income may include amounts excluded for the purpose of determining adjusted income. See § 3555.152(a) for a complete description of repayment income.

Rural area: A rural area is any one of the following:

(1) Open country which is not part of or associated with an urban area.

(2) Any town, village, city, or place, including the immediately adjacent densely settled area, which is not part of or associated with an urban area and which:

(i) Has a population not in excess of 10,000 if it is rural in character; or

(ii) Has a population in excess of 10,000 but not in excess of 20,000, is not contained within a Metropolitan Statistical Area, and has a serious lack of mortgage credit for low-and moderate-income households as determined by the Secretary of Agriculture and the Secretary of HUD.

(3) An area classified as a rural area prior to October 1, 1990 (even if within a Metropolitan Statistical Area), with a population exceeding 10,000, but not in excess of 25,000, which is rural in character, and has a serious lack of mortgage credit for low-and moderate-income families. This is effective through receipt of census data for the year 2000.

Rural Development. A mission area within USDA which includes the Rural Housing Service, Rural Utilities Service, and Rural Business-Cooperative Service.

Scheduled payment. The monthly installment on a promissory note plus escrow payments, as modified by any interest assistance agreement or forbearance agreement.

Secured loan. A loan that is collateralized by property so that in the event of a default on the loan, the property may be sold to pay down the debt.

Security instrument. The mortgage or deed of trust that secures the promissory note or assumption agreement.

Security property. All the property that serves as collateral for a guaranteed loan.

Supplemental loan. A guaranteed loan made in conjunction with a transfer and assumption to provide funds to complete the transaction.

Suspension. An action taken under part 3017 of this title or title 48 of the Code of Federal Regulations to exclude a person or entity from participation in Federal programs for a temporary period, pending completion of an investigation of wrongdoing.

Total debt ratio. The amount paid by the borrower for PITI and any recurring monthly debt, divided by repayment income. This is often known as the ''back-end ratio.''

Unauthorized assistance. Any guaranteed loan or interest assistance for which there was no regulatory or statutory authorization, or for which the borrower was not eligible.

United States citizen. An individual who resides as a citizen in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Federated States of Micronesia, the Republic of Palau, or the Republic of the Marshall Islands.

USDA. The United States Department of Agriculture.

VA. The United States Department of Veterans Affairs.

Value appreciation. The current market value of the property minus the balance due prior lienholders (if any), the unpaid balance of the debt, unreimbursed closing costs (if any), principal reduction, the original equity (if any) of the borrower, and the value added by capital improvements.

Veterans preference. A preference extended to any person applying for a loan guarantee under this part who served on active duty and has been discharged or released from the active forces on conditions other than dishonorable from the United States Army, Navy, Air Force, Marine Corps, or Coast Guard. The preference applies to the service person, or the family of a deceased serviceperson who died in service before the termination of such war or such period or era. The applicable time frames are:

(1) During the period of April 6, 1917, through March 31, 1921;

(2) During the period of December 7, 1941, through December 31, 1946;

(3) During the period of June 27, 1950, through January 31, 1955;

(4) For a period of more than 180 days, any part of which occurred after January 31, 1955, but on or before May 7, 1975; or

(5) During the period beginning August 2, 1990, and ending the date prescribed by Presidential Proclamation or law.

§§ 3555.11–3555.50 [Reserved]

Subpart B—Lender Participation

§ 3555.51 Lender eligibility.

To be approved to participate in the Guaranteed Rural Housing Loan Program, a lender must meet the requirements described in this section.

(a) *Ability to underwrite and service loans.* The lender must have a demonstrated ability to underwrite and service single family loans. A lender will be considered to have such a demonstrated ability if it qualifies as one of the following:

(1) A State Housing Agency;

(2) A lender approved as a supervised or nonsupervised mortgagee by the HUD with direct endorsement authority for submission of applications for Federal Housing Mortgage Insurance;

(3) A lender approved as a supervised or nonsupervised mortgagee by VA with authority to close loans on the automatic basis;

(4) A lender approved by Fannie Mae for single family loans;

(5) A lender approved by Freddie Mac for single family loans;

(6) A Farm Credit System institution that provides documentation of its ability to underwrite and service single family loans;

(7) A lender participating in other Rural Development or Farm Service Agency guaranteed loan programs that provides documentation of its ability to underwrite and service single family loans; or

(8) A Federally-supervised lender that provides documentation of its ability to underwrite and service single family loans. Acceptable sources of supervision include:

(i) Being a member of the Federal Reserve System;

(ii) The Federal Deposit Insurance Corporation (FDIC);

(iii) The National Credit Union Administration (NCUA); or

(iv) The Office of Thrift Supervision (OTS).

(b) *Program participation requirements.* Lenders and their agents must comply with the following requirements:

(1) Keep up to date on, and comply with, all Agency regulations;

(2) Cooperate fully with Agency reporting and monitoring processes;

(3) Comply with limitations on loan purposes, loan limitations, interest rates, and loan terms;

(4) Inform the Agency in advance of any sale, transfer, or change of servicers of any Agency guaranteed loan;

(5) Maintain reasonable and prudent business practices;

(6) Remain responsible for servicing even if servicing has been contracted to a third party;

(7) Use Rural Development, HUD, Fannie Mae, or Freddie Mac forms;

(8) Maintain eligibility under paragraph (a) of this section;

(9) Notify the Agency if there are any material changes in organization or practices;

(10) Remain in good standing, and neither debarred nor suspended from participation in Federal programs;

(11) Notify the Agency in the event of bankruptcy or insolvency of the lender;

(12) Remain free from default and delinquency on any debt owed to the Federal government;

(13) Maintain a fidelity and omissions policy consistent with the volume of loans originated, and listing the Agency as the loss payee; and

(14) Allow the Agency or any Agency's representative access to the lender's records, including on-site reviews of the lender's operation and the operations of any agent of the lender, for the purpose of verifying compliance with Agency regulations and guidelines.

§ 3555.52 Lender approval.

(a) *Initial approval.* The lender must apply for and receive approval from the Agency to participate in the program.

(b) *Termination of approval.* Once approved, the lender will remain eligible to participate in the program unless the Agency determines that one of the following has occurred.

(1) *Lapse of any eligibility requirement.* In the event that a lender fails to comply with any of the requirements described in § 3555.51, the lender must notify the Agency immediately. The Agency will determine whether the change warrants termination of the lender's approval.

(2) *Unsatisfactory lender performance or Government convenience.* If the Agency determines that continued lender approval is not in the best interest of the Government, the Agency may terminate the lender's approval.

(3) *Voluntary withdrawal.* The lender may choose to end participation in the program at any time.

(c) *Results of termination of approval or withdrawal from the program.* If the Agency terminates a lender's approval or the lender withdraws from the program, the Agency may:

(1) Require that the lender transfer servicing of its loans to an approved lender; and

(2) Pursue additional actions including, but not limited to, suspension or debarment.

§ 3555.53 Contracting for loan origination.

Lenders may contract with brokers, nonapproved lenders, or other loan originators for loan origination services, closing services, or both, provided the loan is transferred immediately after closing to the approved lender to which the guarantee will be issued. The approved lender is responsible for underwriting the loan, obtaining the conditional commitment, and ensuring that the loan is properly closed.

§ 3555.54 Sale of loans to approved lenders.

Lenders may sell guaranteed loans only to other Agency approved lenders, Fannie Mae, or Freddie Mac. In such a sale, the purchasing lender acquires all rights of the selling lender under the loan note guarantee, and assumes all of the selling lender's obligations contained in any note, security instrument, or loan note guarantee in connection with the loan purchased. The purchasing lender will be subject to any defenses, claims, or offsets that the Agency would have had against the selling lender if the selling lender had continued to hold the loan. The lender must notify the Agency immediately upon the sale or transfer of servicing of a loan.

§§ 3555.55–3555.100 [Reserved]

Subpart C—Loan Requirements

§ 3555.101 Loan purposes.

Guaranteed loan funds must be used to acquire a new or existing dwelling to be used by the applicant as a principal residence.

(a) Loan funds may be used for:

(1) The construction of a new dwelling;

(2) The cost of acquisition of an existing dwelling;

(3) The cost of repairs associated with the acquisition of an existing dwelling; or

(4) Acquisition and relocation of an existing dwelling.

(b) Loan funds also may be used to pay for the following items.

(1) Reasonable and customary expenses related to obtaining the loan, including:

(i) Legal, architectural, and engineering fees;

(ii) Title clearance, title insurance, and loan closing costs;

(iii) Transfer taxes and recordation fees;

(iv) Appraisal, surveying, environmental, tax monitoring, and technical services;

(v) Reasonable and customary lender fees and charges;

(vi) For low-income borrowers only, reasonable and customary loan discount points; and

(vii) Homeownership education, for first-time homebuyers only.

(2) Special design features or equipment when necessary because of a physical disability of the applicant or a member of the household.

(3) Reasonable connection fees, assessments, or the pro rata installment costs for utilities such as water, sewer, electricity and gas for which the borrower is responsible.

(4) The prorated portion of real estate taxes that are due and payable on the property at the time of closing and for the establishment of escrow accounts for real estate taxes, hazard and flood insurance premiums, and related costs.

(5) Purchase and installation of essential equipment in the dwelling, including but not limited to: ranges, refrigerators, washers, and dryers.

(6) Purchase and installation of energy-saving measures.

(7) Site preparation including grading, foundation plantings, seeding or sodding, trees, walks, yard fences, and driveways to a building site.

(8) A supplemental loan to provide funds for seller equity or essential repairs when an existing guaranteed loan is assumed simultaneously.

(c) Refinancing is permitted only in the following situations:

(1) The loan may be used for permanent financing when financing to construct a new dwelling, or to improve an existing dwelling, is arranged as a part of the loan package.

(2) In the case of loans for a site without a dwelling, refinancing is permitted if:

(i) The debt to be refinanced was incurred for the sole purpose of purchasing the site;

(ii) The applicant is unable to acquire adequate housing without refinancing; and

(iii) An appropriate dwelling has been constructed on the site.

§ 3555.102 Loan restrictions.

A guarantee will not be issued if loan funds are to be used for:

(a) Purchase of an existing manufactured home, except as provided in § 3555.208(b)(3);

(b) Purchase or improvement of income-producing land or buildings to be used principally for income-producing purposes;

(c) Loan discount points, except as provided in § 3555.101(b)(1)(vi);

(d) Refinancing, except as provided in § 3555.101(c); or

(e) Payments on a lease.

§ 3555.103 Maximum loan amount.

The amount of the loan must not exceed the lesser of:

(a) The maximum dollar limitation provided in section 203(b)(2) of the National Housing Act of 1949, (12 U.S.C. 1702); or

(b) The market value of the property.

§ 3555.104 Loan terms.

(a) *Interest rate.* The loan must be written at an interest rate that is fixed over the term of the loan and shall be negotiated between the lender and borrower. In no case may the maximum interest rate exceed the maximum rate published by the Agency through a Notice in the **Federal Register.**

(b) *Repayment period.* The loan term will be 30 years.

(c) *Repayment schedule.* Amortized payments will be due and payable monthly.

(d) *Negative amortization.* The loan note must not provide for interest on interest.

§ 3555.105 Interest assistance.

Subject to the availability of funds, the Agency may provide interest assistance to eligible borrowers.

(a) *Eligibility for interest assistance.* (1) Borrowers whose loan was approved as a subsidized guaranteed loan between April 17, 1991, and September 30, 1991, and executed Form RD 1980–12, ''Master Interest Assistance and Shared Equity Agreement With Promissory Note,'' at loan closing, are eligible to receive interest assistance if they:

(i) Have not sold or transferred the property;

(ii) Occupy the property as a principal residence; and

(iii) Qualify for at least $20.00 per month interest assistance.

(2) If a borrower ceases to receive interest assistance, they must have an adjusted household income that is at or below the applicable low-income limit in order to qualify to receive interest assistance again.

(b) *Floor interest rate.* The floor interest rate is determined by comparing the household's adjusted income to the adjusted median income for the area in which the security property is, or will be, located. The following chart is used to determine the floor interest rate paid by households that receive interest assistance.

PERCENTAGE OF MEDIAN INCOME AND THE FLOOR INTEREST RATE

[Figures are in percents]

When the adjusted income for the household is—		Then the floor interest rate is [1]	High cost area floor interest rate is
Equal to or more than	But less than		
0	60% of adjusted median income	3	3
60	65% of adjusted median income	4	3
65	70% of adjusted median income	5	4
70	75% of adjusted median income	6	5
75	80% of adjusted median income	7	6
80	90% of adjusted median income	8	7
90	100% of adjusted median income	9	8
100	110% of adjusted median income	10	9
110	115% of adjusted median income	11	10
115% of adjusted median income		12	11

[1] Or note rate, whichever is less; in no case will the floor interest rate be less than 3 percent.

(c) *High cost area.* (1) A borrower who received a loan in a designated high cost area will be granted an additional 1 percent interest assistance in order to assist the borrower in obtaining financial assistance.

(2) The change in designation to (or from) a high cost area will not affect existing loans.

(3) A borrower's loan eligibility for high cost designation is determined at the time of issuance of the Conditional Commitment for the loan guarantee.

(d) *Annual interest assistance review.* (1) The lender must review annually each borrower's eligibility for continued interest assistance and determine the appropriate level of assistance. As part of renewal for interest assistance, borrowers must submit documentation requested for the review, and must continue to occupy the property as a principal residence.

(2) If the renewal is not completed before the expiration date of the existing agreement, the effective date of the renewal will be either the expiration date of the previous agreement if an Agency or lender error caused the delay, or the next due date after the renewal is approved in all other cases.

(3) The borrower must notify the lender whenever household income increases by $100 or more per month. The household may also report decreases in income of $100 or more per month and which may result in the borrower being eligible for at least an additional $20 interest assistance per month. If the change in the household's income will cause the payment for principal and interest to change, the household's interest assistance may be adjusted for a new 12-month period. The new agreement will be effective on the due date following the date the borrower's information is verified by the lender.

(e) *Processing fee.* The Agency will pay the lender a fee for each Interest Assistance Agreement processed, unless the Interest Assistance Agreement was incorrect due to the lender's error.

(f) *Overpayment of interest assistance.* When the lender becomes aware of circumstances that have resulted in an overpayment of interest assistance for any reason, the following actions will be taken:

(1) The lender must immediately notify the borrower and the Agency;

(2) The interest assistance agreement will be corrected; and

(3) A repayment agreement acceptable to the Agency will be reached.

(g) *Cancellation of interest assistance.* The lender must notify the Agency that the borrower no longer qualifies for interest assistance if:

(1) The borrower ceases to occupy the property;

(2) The security property is sold or title to the property is transferred; or

(3) The borrower qualifies for interest assistance of less than $20 per month.

(h) *Assumed loans.* Loans which were approved as subsidized guaranteed loans between April 17, 1991, and September 30, 1991, and are assumed by a new borrower are not eligible for interest assistance regardless of the income of the new owner.

§ 3555.106 Recapture.

Borrowers with guaranteed loans may be required to repay interest assistance. Amounts to be recaptured are due and payable when the borrower transfers title or ceases to occupy the property. If an entity other than the Agency provides assistance to a borrower and requires recapture, the Agency will collect its recapture amounts prior to recapture by the other entity.

(a) *Amount to be recaptured.* The maximum amount to be recaptured is the lesser of:

(1) The amount of interest assistance received; or

(2) 50 percent of the value appreciation.

(b) *Assumed loans.* When a loan subject to recapture is assumed, the recapture amount must be paid in full by the seller, unless title is transferred and the loan is assumed under § 3555.256(d). Under this exception, recapture amounts will not be due at the time the loan is assumed; however, when the new borrower transfers title or ceases to occupy the property, all interest assistance subject to recapture before and after the assumption must be paid in full.

§ 3555.107 Application for and issuance of the loan guarantee.

(a) *Processing of applications.* In general, the Agency will process loan guarantee applications in the order that completed applications are received.

(1) When funding is not available, applications will be placed on a waiting list, with priority given to applications submitted on behalf of first-time homebuyers.

(2) In the case of applications with equivalent priority status that are received on the same day, preference will be given to those qualifying for veteran's preference.

(b) *Appraisals.* The lender must supply, as part of the application package, a current appraisal of the property for which the guarantee is requested. Appraisals must be conducted in accordance with the Uniform Standards of Professional Appraisal Practices.

(c) *Environmental requirements.* The lender will meet all its responsibilities in accordance with § 3555.5.

(d) *Issuance of a conditional commitment.* The lender must demonstrate that all the general loan, applicant, and site requirements of this part are met before the Agency will issue a conditional commitment.

(e) *Loan guarantee fee.* The lender must pay a fee of up to 1 percent of the loan amount, the cost of which may be passed on to the borrower. Once the guarantee has been issued, the fee will not be refunded.

(f) *Proper closing.* The lender must ensure that any loan to be guaranteed is properly closed using documents acceptable to the Agency.

(g) *Issuance of the guarantee.* The loan guarantee does not take effect until:

(1) The lender transmits the required guarantee fee in accordance with § 3555.107(e), the lender certification form provided by the Agency, and loan closing documents to the Agency;

(2) Any construction or rehabilitation, except exterior development as described in § 3555.202(d) is complete; and

(3) The Agency issues the loan guarantee document.

§§ 3555.108–3555.150 [Reserved]

Subpart D—Underwriting the Applicant

§ 3555.151 Eligibility requirements.

(a) *Income eligibility.* At the time of loan approval, the household's adjusted income must not exceed the applicable moderate-income limit for the area.

(b) *Citizenship status.* Applicants must be United States citizens or qualified aliens, as defined in § 3555.10.

(c) *Principal residence.* Applicants must agree to and have the ability to occupy the dwelling as a principal residence on a permanent basis. The Agency will not guarantee loans for temporary housing.

(d) *Eligibility of current homeowners.* Current homeowners are eligible for guaranteed loans: Provided, that by closing of the guaranteed loan, they do not own nor are they financially responsible for another home or other real property.

(e) *Legal capacity.* Applicants must have the legal capacity to incur the loan obligation, or have a court-appointed guardian or conservator who is empowered to obligate the applicant in real estate matters.

(f) *Suspension or debarment.* Applicants who are suspended or debarred from participation in Federal programs under part 3017 of this title or title 48 of the Code of Federal Regulations are not eligible for loan guarantees.

(g) *Repayment ability.* Applicants must demonstrate adequate repayment ability.

(1) An applicant is considered to have adequate repayment ability when the monthly amount required for payment of principal, interest, taxes, and insurance (PITI) does not exceed 29 percent of the applicant's repayment income, and the monthly amount required to pay PITI plus recurring

monthly debts does not exceed 41 percent of the applicant's repayment income.

(2) Repayment ratios may exceed the percentages specified in paragraph (g)(1) of this section if the lender determines that compensating factors demonstrate that the household has a higher repayment ability and the lender obtains Agency approval.

(3) If an applicant does not meet the repayment ability requirements, the applicant can increase repayment ability by having other household members join the application.

(4) Mortgage Credit Certificates may be considered in determining an applicant's repayment ability.

(5) A funded buydown account may be used to improve repayment ability when all of the following requirements are met.

(i) The interest rate must be bought down to no more than 2 percentage points below the note rate.

(ii) The interest rate paid by the borrower must increase to the note rate within 2 years of loan closing, with an increase of no more than 1 percentage point annually.

(iii) Funds must be placed in an escrow account with monthly releases scheduled directly to the lender.

(iv) Funds must be placed with a Federally-or state-regulated lender.

(v) The escrow account must be fully funded for the buydown period.

(vi) The borrower is not permitted to fund the escrow account and must not be required to repay the funds.

(h) *Credit qualifications.* Applicants must meet the following credit qualifications:

(1) Applicants must have a credit history that indicates reasonable ability and willingness to meet debt obligations. Indicators of unacceptable credit include:

(i) An outstanding judgment obtained by the United States in a Federal court, other than the United States Tax Court;

(ii) A delinquent Federal debt;

(iii) Three or more debt payments more than 30 days late within the last 12 months;

(iv) A foreclosure which has been completed within the last 36 months;

(v) An outstanding Internal Revenue Service (IRS) tax lien or any other outstanding tax liens with no satisfactory arrangement for payment;

(vi) A court-created or court-affirmed obligation or judgment caused by nonpayment that is currently outstanding or has been outstanding within the last 12 months, except for those excluded in paragraph (h)(2) of this section;

(vii) Two or more rent payments paid 30 or more days late within the last two years. If the applicant has experienced no other credit problems in the past 2 years, only 1 year of rent history will be evaluated. Rent payment history requirements may be waived by the lender if the guaranteed loan will reduce shelter costs significantly and contribute to an improved repayment ability;

(viii) Outstanding collection accounts with a record of irregular payment with no satisfactory arrangements for repayment, or collection accounts that were paid in full within the last 6 months;

(ix) Non-Agency debts written off within the last 36 months unless paid in full at least 12 months ago; and

(x) Agency debts that were debt settled within the last 36 months, or are being considered for debt settlement.

(2) The following will not be considered indicators of unacceptable credit:

(i) A bankruptcy in which debts were discharged more than 36 months prior to the date of application or where an applicant successfully completed a bankruptcy debt restructuring plan and has demonstrated a willingness to meet obligations when due for the 12 months prior to the date of application; and

(ii) A judgment satisfied more than 12 months before the date of application.

(3) The lender may consider mitigating circumstances to establish the borrower's intent for good credit (except when an applicant is delinquent on a Federal debt or has an outstanding judgment obtained by the United States in a Federal Court, other than the United States Tax Court) when the applicant provides documentation that:

(i) The circumstances were of a temporary nature and have been removed; or

(ii) The loan will significantly reduce the applicant's shelter costs, which will result in enhanced debt repayment ability.

(i) *Homeownership education.* The lender must ensure that borrowers who are first-time homebuyers, prior to loan closing, obtain education that adequately prepares them for the obligations of homeownership.

§ 3555.152 Calculation of income and assets.

(a) *Repayment income.* Repayment income is the annual amount of adequate and dependable income from all sources that those household members who are parties to the promissory note are expected to receive, except for any student financial aid received by household members for tuition, fees, books, equipment, materials, and transportation. Repayment income is used to determine the applicant's ability to repay a loan.

(b) *Annual income.* Annual income is the income of all household members from all sources, including, but not limited to, net family assets as defined in paragraph (d) of this section except for the following:

(1) Earned income of persons under the age of 18 unless they are an applicant or a spouse of a member of the household;

(2) Payments received for the care of foster children or foster adults;

(3) Amounts granted for, or in reimbursement of, the cost of medical expenses;

(4) Earnings of each full-time student 18 years of age or older, except the head of household or spouse, that are in excess of any amount determined pursuant to 24 CFR 5.609(c);

(5) Temporary, nonrecurring, or sporadic income (including gifts);

(6) Lump sum additions to family assets such as inheritances; capital gains; insurance payments under health, accident, or worker's compensation policies; settlements for personal or property losses; and deferred periodic payments of supplemental security income and Social Security benefits received in a lump sum;

(7) Any earned income tax credit;

(8) Adoption assistance in excess of any amount determined pursuant to 24 CFR 5.609(c);

(9) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling;

(10) Amounts paid by a State agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home;

(11) The full amount of any student financial aid; and

(12) Any other revenue exempted by a Federal statute, a list of which is available from any Rural Development office.

(c) *Adjusted income.* Adjusted income is used to determine program eligibility and the amount of payment subsidy, if any, for which the household qualifies. Adjusted income is annual income as defined in paragraph (b) of this section, less any of the following deductions for which the household is eligible.

(1) A reduction for each family member, except the head of household or spouse, who is under 18 years of age, 18 years of age or older with a disability, or a full-time student, the amount of which will be determined pursuant to 24 CFR 5.611.

(2) A deduction of reasonable expenses for the care of a child 12 years of age or under that:

(i) Enables a family member to work, to actively seek work, or to further a member's education;

(ii) Are not reimbursed or paid by another source; and

(iii) In the case of expenses to enable a family member to work, do not exceed the amount of income, including the value of any health benefits, earned by the family member enabled to work.

(3) A deduction of reasonable expenses related to the care of household members with disabilities that:

(i) Enable a family member to work, to actively seek work, or to further a member's education;

(ii) Are not reimbursed from insurance or another source; and

(iii) Are in excess of 3 percent of the household's annual income.

(4) For any elderly family, a deduction in the amount determined pursuant to 24 CFR 5.611.

(5) For elderly and disabled families only, a deduction for household medical expenses that are not reimbursed from insurance or another source and which, in combination with any expenses related to the care of household members with disabilities described in paragraph (c)(3) of this section, are in excess of 3 percent of the household's annual income.

(d) *Net family assets.* Income from net family assets must be included in the calculation of annual income.

(1) Net family assets include the cash value of:

(i) Equity in real property, other than the dwelling or site;

(ii) Cash on hand and funds in savings or checking accounts;

(iii) Amounts in trust accounts that are available to the household;

(iv) Stocks, bonds, and other forms of capital investments that are accessible to the applicant without retiring or terminating employment;

(v) Lump sum receipts such as lottery winnings, capital gains, and inheritances;

(vi) Personal property held as an investment; and

(vii) Any value, in excess of the consideration received, for any business or household assets disposed of for less than fair market value during the 2 years preceding the income determination. The value of assets disposed of for less than fair market value shall not be considered if they were disposed of as a result of foreclosure, bankruptcy, or a divorce or separation settlement.

(2) Net family assets do not include:

(i) Interest in American Indian restricted land;

(ii) Cash on hand which will be used to reduce the amount of the loan;

(iii) The value of necessary items of personal property;

(iv) Assets that are part of the business, trade, or farming operation of any member of the household who is actively engaged in such operation;

(v) Amounts in voluntary retirement plans such as individual retirement accounts (IRAs), 401(k) plans, and Keogh accounts (except at the time interest assistance is initially granted); and

(vi) The value of an irrevocable trust fund or any other trust over which no member of the household has control.

§§ 3555.153–3555.200 [Reserved]

Subpart E—Underwriting the Property

§ 3555.201 Site requirements.

(a) *Rural areas.* The Agency will only guarantee loans made in rural areas designated by the Agency. However, if a rural area designation is changed to nonrural:

(1) Existing conditional commitments in the former rural area will be honored; and

(2) A supplemental loan may be made in conjunction with a transfer and assumption of a guaranteed loan.

(b) *Site standards.* Sites must be developed in accordance with any standards imposed by a State or local government and must meet all of the following requirements.

(1) The value of the site, excluding the dwelling and any outbuildings, must not exceed 30 percent of the market value of the property, except that if the value of the site is typical for the area and the site is not large enough to subdivide into more than one site under existing zoning ordinances, the 30 percent limitation may be exceeded.

(2) The site must not include farm service buildings, but small outbuildings such as a storage shed may be included.

(3) The site must be contiguous to and have direct access from a street, road, or driveway. Streets and roads must be hard surfaced or all-weather surfaced and arrangements must be in place to ensure that needed maintenance will be provided.

(4) The site must be supported by adequate utilities and water and wastewater disposal systems.

§ 3555.202 Dwelling requirements.

(a) *Modest dwelling.* Dwellings financed with a guaranteed loan must be considered modest housing for the area as defined in § 3555.10.

(b) *New dwellings.* New dwellings must meet the thermal standards and be constructed in accordance with certified plans and specifications as described in part 1924, subpart A, of this title. To ensure acceptable construction quality, the lender must obtain:

(1) Documentation of acceptable construction quality and evidence of a 1-year builder's warranty; or

(2) A final inspection report and evidence of a 10-year builder's warranty.

(c) *Existing dwellings.* Existing dwellings must:

(1) Be structurally sound;

(2) Be functionally adequate;

(3) Be in good repair, or to be placed in good repair with loan funds;

(4) Have adequate and safe electrical, heating, plumbing, water, and wastewater disposal systems;

(5) Be free of termites and other wood damaging pests and organisms; and

(6) Meet the thermal standards specified in part 1924, subpart A of this title.

(d) *Escrow account for exterior development.* If a dwelling is complete with the exception of exterior development work, the Agency may guarantee the loan if the following conditions are met:

(1) The exterior cannot be completed immediately because of weather conditions;

(2) All unfinished work will be completed within 120 calendar days of loan closing;

(3) The unfinished work will not affect habitability; and

(4) The lender establishes an escrow account at closing funded at 150 percent of the estimated completion cost of the remaining work.

§ 3555.203 Ownership requirements.

After the loan is closed, the borrower must have an acceptable ownership interest in the property as evidenced by one of the following:

(a) *Fee-simple ownership.* Acceptable fee-simple ownership is evidenced by a fully marketable title with a deed vesting a fee-simple interest in the property to the borrower.

(b) *Secure leasehold interest.* Loans may be guaranteed on leasehold properties if the lender determines that the following conditions are met:

(1) The applicant is unable to obtain fee simple title to the property;

(2) Such leaseholds are fully marketable in the area, except in the case of properties located on American Indian restricted land; and

(3) The lease has an unexpired term of at least 45 years from the date of loan closing, except in the case of properties located on American Indian restricted land where the lease must have an

unexpired term at least equal to the term of the loan.

§ 3555.204 Security requirements.

The Agency will only guarantee loans that are adequately secured. A loan will be considered adequately secured only when all of the following requirements are met:

(a) The lender obtains, at closing, a mortgage on all required ownership and leasehold interests in the security property and ensures that the loan is properly closed;

(b) No liens prior to the guaranteed mortgage exist except in conjunction with a supplemental loan for transfer and assumption;

(c) Existing and proposed property improvements are completely on the site and do not encroach on adjoining property; and

(d) All collateral secures the entire loan.

§ 3555.205 Special requirements for condominiums.

Loans may be guaranteed for condominium units that meet all of the requirements of this part and the unit is in a project approved or accepted by HUD, Fannie Mae, VA, or Freddie Mac.

§ 3555.206 Special requirements for community land trusts.

Loans may be guaranteed for dwellings on land owned by a community land trust if all the requirements of this part are met, and any restrictions imposed by the community land trust on the property or applicant:

(a) Are reviewed and accepted by the Agency before loan closing; and

(b) Automatically and permanently terminate upon foreclosure or acceptance by the lender of a deed in lieu of foreclosure.

§ 3555.207 Special requirements for Planned Unit Developments.

Loans may be guaranteed for PUDs that meet all of the requirements of this part, as well as the criteria for PUDs established by HUD, VA, Fannie Mae, or Freddie Mac.

§ 3555.208 Special requirements for manufactured homes.

Loans may be guaranteed for manufactured homes if all of the requirements of this part are met.

(a) *Eligible costs.* In addition to the loan purposes described in § 3555.101, the Agency may guarantee a loan used for the following purposes related to manufactured homes when a real estate mortgage covers both the unit and the site:

(1) Purchase of a new manufactured home meeting the requirements of manufactured housing in § 3555.10, transportation, permanent foundation, and set-up costs of the manufactured home, and purchase of an eligible site if not already owned by the applicant; and

(2) Site development work in accordance with part 1924, subpart A of this title.

(b) *Loan restrictions.* In addition to the loan restrictions contained in § 3555.102, the following loan restrictions also will apply.

(1) A loan will not be guaranteed if it is used to purchase a site without also financing a new unit.

(2) A loan will not be guaranteed if it is used to purchase furniture, including but not limited to: movable articles of personal property such as drapes, beds, bedding, chairs, sofas, divans, lamps, tables, televisions, radios, and stereo sets. Furniture does not include wall-to-wall carpeting, refrigerators, ovens, ranges, washing machines, clothes dryers, heating or cooling equipment, or other similar items.

(3) A loan will not be guaranteed to purchase an existing manufactured home and site unless:

(i) The unit and site are already financed with an Agency direct single family or guaranteed loan;

(ii) The unit and site are being sold from the Agency's inventory; or

(iii) The unit and site are being sold from the lender's inventory, and the loan for which the unit and site served as security was a loan guaranteed by the Agency.

(c) *Dealer-contractors.* No loans will be guaranteed on a manufactured home sold by any entity that is not an Agency-approved dealer-contractor that will provide complete sales, service, and site development services.

(d) *Construction and development.* Unit construction must conform to the Federal Manufactured Home Construction and Safety Standards (FMHCSS) and the Agency's thermal standards in accordance with part 1924, subpart A of this title. The site development and set-up also must conform with that subpart and the manufacturer's requirements for a permanent installation.

(e) *Warranty requirements.* The dealer-contractor must provide a warranty in accordance with the provisions part 1924, subpart A of this title. The warranty must identify the unit by serial number. The dealer-contractor must certify that the manufactured home has sustained no hidden damage during transportation and, if manufactured in separate sections, that the sections were properly joined and sealed according to the manufacturer's specifications. The data plate, affixed to the inside of the unit, and the certification label, affixed to each transportable section at the tail-light end of each unit, indicates that the manufactured home substantially conforms with the plans and specifications. The dealer-contractor also must furnish the applicant with a copy of all manufacturer's warranties.

§§ 3555.209–3555.250 [Reserved]

Subpart F—Regular Servicing

§ 3555.251 Servicing responsibility.

(a) Lenders must perform those servicing actions that a reasonable and prudent lender would perform in servicing its own portfolio of unguaranteed loans.

(b) The Agency may require a lender to transfer its loan servicing activities to an approved lender if the lender fails to provide acceptable servicing.

(c) A lender may choose to contract with a third party to service its loans, but remains responsible for the quality of the servicing.

§ 3555.252 Required servicing actions.

Lender servicing responsibility includes, but is not limited to, the following actions.

(a) *Collecting regularly scheduled payments.* Lender must collect regularly scheduled loan payments and apply them to the borrower's account.

(b) *Payment of taxes and insurance.* Lenders must ensure that real estate taxes, assessments, and flood and hazard insurance premiums for all property that secures a guaranteed loan are paid on schedule.

(1) *Establish escrow account.* Lenders with the capacity to escrow funds must establish escrow accounts for all guaranteed loans for the payment of taxes and insurance. Escrow accounts must be administered in accordance with the Real Estate Settlement and Procedures Act (RESPA) of 1974, and insured by the Federal Deposit Insurance Corporation (FDIC).

(2) *Plan and responsibility of lender to ensure payment.* Lenders that do not have the capacity to escrow funds must obtain Agency approval of a plan for ensuring that the borrower pays such obligations on a timely basis. In addition, such lenders must accept the responsibility for payment of taxes and insurance that come due prior to liquidation. The Agency will not include any taxes or insurance amounts that accrued prior to acceleration in any potential loss claim.

(c) *Insurance.* (1) Until the loan is paid in full, lenders must ensure that borrowers maintain hazard and flood

insurance on property securing guaranteed loans. The insurance must be issued by companies, in amounts, and on terms and conditions acceptable to the Agency. Flood insurance through the National Flood Insurance Program must be maintained for all property located in special flood or mud slide areas identified by FEMA and must be consistent with part 1806, subpart B of this title.

(2) Lenders must ensure that borrowers immediately notify them of any loss or damage to insured property and collect the amount of the loss from the insurance company. Unless the borrower pays off the guaranteed loan using the insurance proceeds, the following requirements must be met.

(i) All repairs and replacements must be planned, performed, and inspected in accordance with Agency construction requirements.

(ii) When insurance funds remain after payments for all repairs, replacements, and other authorized disbursements have been made, the funds must be applied in the following order: prior liens (including past-due property taxes); past-due amounts; protective advances; and released to the borrower if the lender's debt is adequately secured.

(d) *Credit reporting.* The lender must notify a credit repository of each new guaranteed loan, and must report to that repository whenever any account becomes more than 30 calendar days past due.

§ 3555.253 Late payment charges.

Late payment charges will not be covered by the guarantee and cannot be added to the principal and interest due under any guaranteed note.

(a) *Maximum amount.* The late payment charge must be reasonable and customary for the area.

(b) *Loans with interest assistance.* The lender must not charge a late fee if the only unpaid portion of the borrower's scheduled payment is interest assistance owed by the Agency.

§ 3555.254 Final payments.

Lenders may release security instruments only after full payment of all amounts owed, including recapture, has been received and verified.

§ 3555.255 Borrower actions requiring lender approval.

(a) *Mineral leases.* A lender may consent to the lease of mineral rights and subordinate its lien to the lessee's rights and interests in the mineral activity if the security property will remain suitable as a residence, the lender's security interest will not be adversely affected, and the environmental requirements of part 1940, subpart G, of this title are met. Subordination of guaranteed loans to a mineral lease does not entitle the leaseholder to any proceeds from the sale of the security property.

(1) If the proposed activity is likely to decrease the value of the security property, the lender may consent to the lease only if the borrower assigns 100 percent of the income from the lease to the lender to be applied to reduce principal, and the total rent to be paid is at least equal to the estimated decrease in the market value of the security property.

(2) If the proposed activity is not likely to decrease the value of the security property, the lender may consent to the lease if the borrower agrees to use any damage compensation received from the lessee to repair damage to the site or dwelling, or to assign it to the lender to be applied to reduce principal.

(b) *Partial release of security property.* A lender may consent to transactions affecting a security property, such as selling or exchanging security property or granting of a right-of-way across the security property, and grant a partial release, provided that the following conditions are met.

(1) The borrower will receive adequate compensation.

(i) For sale of security property, the borrower must receive cash in an amount equal to or greater than the value of the security property being sold or interests being conveyed.

(ii) For exchange of security property, the borrower must receive another parcel of property with value equal to or greater than that being disposed of.

(iii) For granting an easement or right-of-way, the borrower must receive benefits that are equal to or greater than the value of the security property being disposed of or interests being conveyed.

(2) An appraisal will be conducted if the most current appraisal is more than 1 year old or if it does not reflect current market value.

(3) The security property, after the transaction is completed, will be an adequate but modest, decent, safe, and sanitary dwelling.

(4) Repayment of the guaranteed debt will not be jeopardized.

(5) When exchange of all or part of the security property is involved, title clearance will be obtained before release of the existing security.

(6) Proceeds from the sale of a portion of the security property, granting an easement or right-of-way, damage compensation, and all similar transactions requiring the lender's consent, will be used in the following order:

(i) To pay customary and reasonable costs related to the transaction that must be paid by the borrower.

(ii) To be applied on a prior lien debt, if any.

(iii) To be applied to the guaranteed indebtedness or used for improvements to the security property consistent with the purposes and limitations applicable for use of guaranteed loan funds. Proposed development will be planned and performed in accordance with Agency standards and supervised by the lender to ensure that the proceeds are used as planned.

(7) The Agency determines that the environmental requirements of part 1940, subpart G of this title are met.

§ 3555.256 Transfer and assumptions.

This section addresses requirements imposed upon the lender for notifying the Agency of a borrower's intent to transfer title to a security property, and if title is transferred, under what conditions the Agency will continue to honor the guarantee.

(a) *Transfer without assumption.* (1) The lender must notify the Agency if the borrower transfers the security property and the transferee does not assume the debt.

(2) Except as described in paragraph (d) of this section, the Agency will withdraw the guarantee if a security property is transferred with the lender's knowledge without assumption of the debt.

(b) *Transfer with assumption.* (1) The lender must obtain Agency approval before consenting to a transfer with an assumption of the outstanding debt.

(2) The Agency may approve a transfer with an assumption of the outstanding debt if the following conditions are met.

(i) The transferee must assume the entire outstanding debt and acquire all property securing the guaranteed loan balance; however, the transferor must remain personally liable.

(ii) The transferee must meet the eligibility requirements described in subpart D of this part.

(iii) The property generally must meet the site and dwelling requirements described in subpart E of this part, or be brought to those standards. Guaranteed loans secured by properties located in areas that have ceased to be rural may be assumed, however, notwithstanding the fact that the property is located in a nonrural area.

(iv) The priority of the existing lien securing the guaranteed loan must be maintained or improved.

(v) Any new rates and terms must not exceed the rates and terms allowed for

new loans under this part, and the interest rate must not exceed the interest rate on the initial loan.

(vi) The transferor must pay any recapture owed at the time of the transfer and assumption.

(vii) A new guarantee fee, calculated based on the remaining principal balance, must be paid to the Agency in accordance with § 3555.107(e).

(viii) If additional financing is required to complete the transfer and assumption or to make needed repairs, the Agency may approve a supplemental guaranteed loan provided adequate security exists.

(c) *Transfer without approval.* If a lender becomes aware that a borrower has transferred a property without the lender's knowledge, the lender must take one of the following actions:

(1) Notify the Agency and continue the loan without the guarantee;

(2) Obtain Agency approval for the transfer with assumption; or

(3) Liquidate the guaranteed loan and submit a claim for any loss.

(d) *Transfer without triggering the due-on-sale clause.* (1) Due-on-sale clauses in security instruments are not triggered by the following types of transfers:

(i) A transfer from the borrower to a spouse or children not resulting from the death of the borrower;

(ii) A transfer to a relative, joint tenant, or tenant by the entirety resulting from the death of the borrower;

(iii) A transfer to a spouse or ex-spouse resulting from a divorce decree, legal separation agreement, or property settlement agreement;

(iv) A transfer to a person other than a deceased borrower's spouse who wishes to assume the loan for the benefit of persons who were dependent on the deceased borrower at the time of death, if the dwelling will be occupied by one or more persons who were dependent on the borrower at the time of death, and there is a reasonable prospect of repayment; or

(v) A transfer into an inter vivos trust in which the borrower does not transfer rights of occupancy in the property.

(2) When a transferee obtains a property with a guaranteed loan through a transfer that does not trigger the due-on-sale clause:

(i) The lender will notify the Agency of the transfer;

(ii) The Agency will continue with the guarantee, whether or not the transferee assumes the guaranteed loan;

(iii) The transferee may assume the guaranteed loan on the rates and terms contained in the promissory note. If the account is past due at the time an assumption agreement is executed, the loan may be reamortized to bring the account current;

(iv) The transferee may assume the guaranteed loan under new rates and terms if the transferee applies and is eligible; and

(v) The transferee may receive interest assistance if eligible in accordance with § 3555.105.

(3) Any subsequent transfer of title, except upon death of the inheritor or between inheritors to consolidate title, will trigger the due-on-sale clause.

§ 3555.257 Unauthorized assistance.

(a) *Unauthorized assistance due to false information.*

(1) If the borrower receives a guaranteed loan based on false information provided by the borrower, the Agency may require the lender to accelerate the guaranteed loan. If the lender fails to accelerate the loan upon request, the Agency may withdraw the guarantee.

(2) If the borrower receives a guaranteed loan based on false information provided by the lender, the Agency may withdraw the guarantee, and may withdraw the lender's approval to participate in the program.

(3) If, based on false information provided by either the lender or the borrower, the borrower receives interest assistance above the amount to which the borrower was entitled, the lender must require the borrower to repay the unauthorized amount within 30 calendar days. If the borrower repays the excess interest assistance, the guaranteed loan may be continued. If the false information was not provided by the borrower, and if the borrower cannot repay the excess amount within 30 calendar days, the account can be reamortized to include the excess interest assistance.

(4) If the borrower or lender provides false information, the Agency may, in addition to criminal and civil false claim actions, pursue suspension or debarment.

(b) *Unauthorized assistance due to inaccurate information.* (1) Inaccurate information is incorrect information inadvertently provided, used, or omitted without the intent to obtain benefits for which the recipient was not eligible.

(2) The Agency will continue to honor a guarantee for a loan made to an applicant who receives a guaranteed loan based on inaccurate information if the applicant was eligible to receive the guaranteed loan at the time it was made, and if the loan funds were used only for eligible loan purposes.

(3) If, based on inaccurate information, the borrower receives interest assistance above the amount to which the borrower was entitled, the lender must require the borrower to repay it within 30 calendar days. If the borrower cannot repay the excess amount within 30 calendar days, the lender may enter into a forbearance agreement with the borrower, or reamortize the guaranteed loan. If the borrower arranges to repay the interest assistance, the Agency will continue to honor the guarantee.

§§ 3555.258–3555.300 [Reserved]

Subpart G—Servicing Accounts With Repayment Problems

§ 3555.301 General policy.

Lenders must make reasonable efforts to resolve any repayment problems and provide borrowers with the maximum opportunity to become successful homeowners. The lender may use the servicing options described in this subpart if a borrower is having difficulty keeping an account current.

§ 3555.302 Forbearance.

Lenders may offer borrowers the opportunity to avoid liquidation by entering into a forbearance agreement that specifies a reasonable plan for bringing the account current.

§ 3555.303 Protective advances.

Lenders may pay for the following expenses necessary to protect the security property and charge the cost against the borrower's account.

(a) *Advances for taxes and insurance.* Lenders may advance funds to pay past due real estate taxes, hazard and flood insurance premiums, and other related costs.

(b) *Advances for costs other than taxes and insurance.* Protective advances for costs other than taxes and insurance, such as emergency repairs, can be made only if the borrower cannot obtain an additional loan or reimbursement from an insurer, or the borrower has abandoned the property.

§ 3555.304 Reamortization.

(a) *Situations with false information provided by the borrower.* If a borrower has received unauthorized assistance only due to false information provided by the borrower, reamortization is not permitted.

(b) *All other situations.* If the borrower has not provided false information, the lender may bring a borrower's account current by reamortizing the guaranteed loan at the promissory note interest rate if:

(1) The lender can demonstrate that there is a reasonable possibility that the borrower will be able to repay the loan after reamortization;

(2) Reamortization is required to enable the borrower to meet scheduled obligations;

(3) The lender's lien priority will not be adversely affected; and

(4) The loan term after reamortization does not exceed the remaining term of the loan before reamortization.

(c) *Loan guarantee amount.* The amount of the loan guarantee is not changed by reamortization.

§ 3555.305 Liquidation.

(a) *Policy.* When a lender determines that a borrower is unable or unwilling to meet loan obligations, the lender may accelerate the guaranteed loan and, if necessary, foreclose. The lender must accelerate the guaranteed loan when the account is three scheduled payments past due unless there is a reasonable prospect of resolving the delinquency through another method. The borrower is responsible for all expenses associated with liquidation and acquisition.

(b) *Acceleration and foreclosure.* The lender must initiate foreclosure within 90 calendar days of the decision to liquidate unless Federal, State, or local law requires that foreclosure action be delayed. In such a case, foreclosure must be initiated within 60 calendar days after acceleration becomes possible.

(c) *Reinstatement of accounts.* Unless State law imposes other requirements, the lender may reinstate an accelerated account only if the borrower:

(1) Pays in a lump sum all past-due amounts, any protective advances, and any foreclosure-related costs incurred by the lender; and

(2) Has the ability to continue making scheduled payments on the guaranteed loan.

(d) *Bankruptcy.* (1) When a petition in bankruptcy is filed by a borrower after acceleration, the lender must suspend collection and foreclosure actions in accordance with title 11 of the United States Code (title 11).

(2) The lender may accept conveyance of security property by the trustee in the bankruptcy, or the borrower, if the bankruptcy court has approved the transaction, and the lender will acquire title free of all liens and encumbrances except the lender's liens.

(3) Whenever possible after the borrower has filed for protection under Chapter 7 of title 11, a reaffirmation agreement will be signed by the borrower and approved by the bankruptcy court prior to discharge, if the lender and the borrower decide to continue.

(e) *Voluntary liquidation.* A borrower may voluntarily liquidate the security property using any of the following methods.

(1) *Refinancing or sale.* The borrower may refinance or sell the security property for a price that reflects at least the property's estimated market value. The sale proceeds, less any reasonable and customary sale or closing costs incurred by the borrower, must be applied to the borrower's account.

(2) *Deed in lieu of foreclosure.* The lender may accept a deed in lieu of foreclosure unless the lender's anticipated costs for selling the property, including any costs required to make the property marketable, exceed the property's estimated market value.

(3) *Offer by junior lienholder.* If a junior lienholder makes an offer in the amount of at least the anticipated net recovery value, as calculated in accordance with § 3555.353, the lender may assign the note and mortgage to the junior lienholder.

(f) *Maintain condition of security property.* The lender must make reasonable and prudent efforts to ensure that the condition of the security property is maintained during any liquidation, acquisition, and sale of the property.

(g) *Interest assistance.* If the borrower is receiving interest assistance, the interest assistance agreement will be canceled when the borrower transfers title or ceases to occupy the property.

(h) *Debt settlement reporting.* The lender must report to the IRS and credit reporting agencies any debt settled through liquidation.

§§ 3555.306–3555.350 [Reserved]

Subpart H—Collecting on the Guarantee

§ 3555.351 Loan guarantee limits.

(a) The maximum loss payment under the guaranteed loan program is the lesser of:

(1) Any loss sustained by the lender of an amount equal to 90 percent of the principal amount actually advanced to the borrower; or

(2) For the first portion of the loss, up to 35 percent of the principal actually advanced, the Agency will pay 100 percent of the loss. For any remaining loss, up to 65 percent of the principal actually advanced, the Agency will pay 85 percent of the loss.

(b) For purposes of this section, the ''principal amount actually advanced'' means the total amount of the loan as indicated by the promissory note, less any loan funds not actually disbursed to the borrower or on behalf of the borrower.

§ 3555.352 Loss covered by the guarantee.

When a loan is liquidated, the Agency will reimburse the lender for the difference between the guaranteed loss incurred by the lender and the net recovery value of the property up to the guarantee limit. Guaranteed losses may include the following:

(a) Principal and interest, as evidenced by the guaranteed loan note;

(b) Additional interest accrued from the start of liquidation to the date of final loss settlement; and

(c) Any principal and interest indebtedness on protective advances, as described in § 3555.303.

§ 3555.353 Net recovery value.

The net recovery value of the property is determined differently for properties that have been sold than for properties that are in the lender's inventory at the time the loss claim is filed.

(a) *Actual net recovery value.* For a property that the lender has sold when a loss claim is filed, net recovery value is calculated as the difference between:

(1) The proceeds from the sale and any other amounts recovered; and

(2) Liquidation and disposition costs that are reasonable and customary for the area. Costs incurred by in-house staff are not allowable.

(b) *Anticipated net recovery value.* For a property that the lender has not sold when a loss claim is filed, net recovery value is calculated as the difference between:

(1) The value of the property as determined by an appraisal that is calculated to provide reasonable assurance that the property will sell within 90 days of being placed on the market; and

(2) Liquidation and estimated disposition costs that are reasonable and customary for the area. Costs incurred by in-house staff are not allowable.

§ 3555.354 Loss claim procedures.

(a) *Sold property.* For property that has been sold, the lender must submit a loss claim within 30 calendar days of the sale.

(b) *REO property.* If the property has not been sold and remains an REO property, the lender must take the following steps.

(1) Notify the Agency that the property has not been sold.

(i) If the property is not located on American Indian restricted land, the lender must notify the Agency if the property has not been sold within 90 calendar days of foreclosure, or from the end of any applicable redemption period, whichever is later.

(ii) If the property is located on an American Indian restricted land, the

lender must notify the Agency if the property has not been sold within 12 months of foreclosure, or from the end of any redemption period, whichever is later.

(2) Upon notification that the property has not been sold, the Agency will conduct an appraisal and provide the results to the lender. The lender must submit a loss claim within 30 calendar days of receiving the results of the appraisal.

(c) *Deficiency judgments.* The lender must enforce any judgment for which there are current prospects of collection before filing a loss claim, and amounts collected must be applied against the outstanding debt. The Agency will make a loss payment if there are not current prospects for collection.

§ 3555.355 Reducing or denying the claim.

(a) *Determination of loss payment.* If the lender has failed to fulfill any of its obligations under this part, the Agency may cancel the guarantee or reduce any loss claim by the portion of the loss that the Agency determines was caused by the lender's failure to comply with the full faith and credit provision of the guarantee agreement. The circumstances under which loss claims may be denied or reduced include, but are not limited to, the following lender actions:

(1) Failure to adhere to required servicing and liquidation procedures;

(2) Failure to ensure that the security property is adequately maintained;

(3) Delay in filing a loss claim;

(4) Claiming unauthorized expenses;

(5) Providing unauthorized assistance;

(6) Failure to obtain the required security or maintain the security position;

(7) Violating usury laws; or

(8) Committing, or failing to report knowledge of, fraud.

(b) *Disputes.* If the lender disputes the loss claim amount determined by the Agency, the Agency will pay the undisputed portion of the loss claim, and the lender may appeal the decision.

§ 3555.356 Future recovery.

If the lender recovers additional funds after the loss claim has been paid, the proceeds will be distributed so that the total loss to the Government is equivalent to the loss that would have been incurred had the recovered amount been included in the initial loss calculation.

§§ 3555.357–3555.400 [Reserved]

Dated: November 30, 1999.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 99–32287 Filed 12–14–99; 8:45 am]

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Part III

Department of Education

34 CFR Parts 606 and 607

Strengthening Institutions Program and Developing Hispanic-Serving Institutions Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 606 and 607

Strengthening Institutions Program and Developing Hispanic-Serving Institutions Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: We amend the regulations governing the Strengthening Institutions and Developing Hispanic-Serving Institutions (HSI) Programs to conform them to statutory changes made to those programs by the Higher Education Amendments of 1998 (1998 Amendments). We have also moved the regulations for the HSI Program to a new part. These regulations also make technical corrections and changes.

EFFECTIVE DATE: These regulations are effective January 14, 2000.

FOR FURTHER INFORMATION CONTACT: Darlene Collins, U.S. Department of Education, 1990 K Street, NW., Washington, DC 20006–8512. Telephone: (202) 502–7576. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person.

SUPPLEMENTARY INFORMATION: The Strengthening Institutions Program is authorized under title III, part A of the Higher Education Act of 1965 as amended (HEA). The HSI Program is now authorized under title V of the HEA. However, prior to the 1998 Amendments, it was also authorized under title III, part A of the HEA. Accordingly, because the HSI Program was moved from title III to title V of the HEA, we moved the regulations governing the program from part 607 to a new part, part 606. However, new part 606 either contains regulatory provisions already included in part 607 or statutory changes made to the HSI Program by the 1998 Amendments.

The 1998 Amendments made several other changes to the HEA with regard to those two programs that require conforming changes to the regulations for the two programs. These statutory amendments incorporated in the regulations in part 606 include:

- Expanding the specific allowable activities, and
- Providing that an institution that receives a five-year individual grant under the HSI Program is not eligible to receive an additional development grant until two years after the date on which the five-year grant terminates.

The statutory amendments incorporated in the regulations in part 607 include:

- Expanding the specific allowable activities, and
- Extending from one year to two years the period that a previous grantee must sit out before it can receive another individual development grant.

The 1998 Amendments also created several new programs under the Strengthening Institutions Program umbrella. These programs provide grants to Indian Tribal Colleges and Universities, Alaska Native-serving institutions, and Native Hawaiian-serving institutions. Grants made to these institutions under these programs are subject to the requirements in part 607. However, to implement these programs, part 607 is further amended to incorporate the following statutory provisions that:

- Authorize grants to Tribal Colleges and Universities to plan, develop, and carry out approved program activities.
- Define the terms ''Indian'', ''Indian Tribe'' and ''Tribal College or University''.
- Allow the Secretary to waive the needy student eligibility requirement if the applicant is a Tribal College or University.
- List activities that Tribal Colleges and Universities may carry out under a grant.
- Provide that no Tribal College or University that receives funds under the Indian Tribal Colleges and Universities Program may concurrently receive other grant funds under the Strengthening Institutions Program, Strengthening Historically Black Colleges and Universities Program, or Strengthening Historically Black Graduate Institutions Program.
- Require a five-year plan for improving the assistance provided by the Tribal College or University to Indian students, increasing the rates at which Indian secondary school students enroll in higher education, and increasing overall postsecondary retention rates for Indian students.
- Authorize grants to assist Alaska Native-serving and Native Hawaiian-serving institutions of higher education to plan, develop and carry out approved program activities.
- Define the terms ''Alaska Native'', ''Alaska Native-serving Institution'' and ''Native Hawaiian-serving institution''.
- List activities that Alaska Native-serving institutions of higher education and Native Hawaiian-serving institutions of higher education may carry out under a grant.
- Provide that no Alaska Native-serving institution or Native Hawaiian-serving institution that receives funds under the programs specifically serving those institutions may concurrently receive other grant funds under the Strengthening Institutions Program, Strengthening Historically Black Colleges and Universities Program, or Strengthening Historically Black Graduate Institutions Program.
- Require a five-year plan for improving the assistance provided by the Alaska Native-serving institution or the Native Hawaiian-serving institution to Alaska Native students or Native Hawaiian students.

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 government for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for this program.

Assessment of Education Impact

Based on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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Waiver of Proposed Rulemaking

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations in accordance with the Administrative Procedure Act (5 U.S.C. 553). However, since these changes merely incorporate statutory amendments into the regulations and do not implement substantive policy, public comment could have no effect. Therefore, the Secretary has determined pursuant to 5 U.S.C. 553(b)(B) that public comment on the regulations is unnecessary and contrary to the public interest.

List of Subjects in 34 CFR Parts 606 and 607

Colleges and universities, Grant programs—education, Reporting and recordkeeping requirements.

Dated: December 8, 1999.

A. Lee Fritschler,

Assistant Secretary, Office of Postsecondary Education.

For the reasons discussed in the preamble, the Secretary amends title 34 of the Code of Federal Regulations by adding a new part 606 and amending part 607 as follows:

1. A new part 606 is added to read as follows:

PART 606—DEVELOPING HISPANIC-SERVING INSTITUTIONS PROGRAM

Subpart A—General

Sec.
606.1 What is the Developing Hispanic-Serving Institutions Program?
606.2 What institutions are eligible to receive a grant under the Developing Hispanic-Serving Institutions Program?
606.3 What is an enrollment of needy students?
606.4 What are low educational and general expenditures?
606.5 How does an institution apply to be designated an eligible institution?
606.6 What regulations apply?
606.7 What definitions apply?
606.8 What is a comprehensive development plan and what must it contain?
606.9 What are the type, duration, and limitations in the awarding of grants under this part?
606.10 What activities may and may not be carried out under a grant?

Subpart B—How Does an Institution Apply for a Grant?

606.11 What must be included in individual development grant applications?
606.12 What must be included in cooperative arrangement grant applications?
606.13 How many applications for a development grant may an institution submit?

Subpart C—How Does the Secretary Make an Award?

606.20 How does the Secretary choose applications for funding?
606.21 What are the selection criteria for planning grants?
606.22 What are the selection criteria for development grants?
606.23 What special funding consideration does the Secretary provide?
606.24 How does the Secretary use an applicant's performance under a previous development grant when awarding a development grant?
606.25 What priority does the Secretary use in awarding cooperative arrangement grants?

Subpart D—What Conditions Must a Grantee Meet?

606.30 What are allowable costs and what are the limitations on allowable costs?
606.31 How does a grantee maintain its eligibility?

Authority: 20 U.S.C. 1101 *et seq.*, unless otherwise noted.

Subpart A—General

§ 606.1 What is the Developing Hispanic-Serving Institutions Program?

The purpose of the Developing Hispanic-Serving Institutions Program is to provide grants to eligible institutions of higher education to—

(a) Expand educational opportunities for, and improve the academic attainment of, Hispanic students; and

(b) Expand and enhance the academic offerings, program quality, and institutional stability of colleges and universities that are educating the majority of Hispanic college students and helping large numbers of Hispanic students and other low-income individuals complete postsecondary degrees.

(Authority: 20 U.S.C. 1101)

§ 606.2 What institutions are eligible to receive a grant under the Developing Hispanic-Serving Institutions Program?

(a) An institution of higher education is eligible to receive a grant under this part if—

(1) At the time of application, it has an enrollment of undergraduate full-time equivalent students that is at least 25 percent Hispanic students;

(2) It provides assurances that not less than 50 percent of its Hispanic students are low-income individuals;

(3) It has an enrollment of needy students as described in § 606.3(a), unless the Secretary waives this requirement under § 606.3(b);

(4) It has low average educational and general expenditures per full-time equivalent undergraduate student as described in § 606.4(a), unless the Secretary waives this requirement under § 606.4(c);

(5) It is legally authorized by the State in which it is located to be a junior college or to provide an educational program for which it awards a bachelor's degree; and

(6) It is accredited or preaccredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered.

(b) A branch campus of a Hispanic-Serving institution is eligible to receive a grant under this part if—

(1) The institution as a whole meets the requirements of paragraph (a) of this section; and

(2) The branch satisfies the requirements of paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this section.

(c)(1) An institution that receives a grant under the Strengthening Institutions Program (34 CFR part 607) or the Strengthening Historically Black Colleges and Universities Program (34 CFR part 608) for a particular fiscal year is not eligible to receive a grant under this part for that same fiscal year, and may not relinquish its grant under those programs to secure a grant under this part.

(2) A Hispanic-Serving institution under this part may not concurrently receive grant funds under the Strengthening Institutions Program, Strengthening Historically Black Colleges and Universities Program, or Strengthening Historically Black Graduate Institutions Program.

(Authority: 20 U.S.C. 1101a and 1101d)

§ 606.3 What is an enrollment of needy students?

(a) Except as provided in paragraph (b) of this section, for the purpose of § 606.2(a)(3), an applicant institution has an enrollment of needy students if in the base year—

(1) At least 50 percent of its degree students received student financial assistance under one or more of the following programs: Federal Pell Grant, Federal Supplemental Educational Opportunity Grant, Federal Work-Study, and Federal Perkins Loan; or

(2) The percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants at comparable institutions that offer similar instruction.

(b) The Secretary may waive the requirement contained in paragraph (a) of this section if the institution demonstrates that—

(1) The State provides more than 30 percent of the institution's budget and the institution charges not more than $99.00 for tuition and fees for an academic year;

(2) At least 30 percent of the students served by the institution in the base year were students from low-income families;

(3) The institution substantially increases the higher education opportunities for low-income students who are also educationally disadvantaged, underrepresented in postsecondary education, or minority students;

(4) The institution substantially increases the higher education opportunities for individuals who reside in an area that is not included in a ''metropolitan statistical area'' as defined by the Office of Management and Budget and who are unserved by other postsecondary institutions; or

(5) The institution will, if granted the waiver, substantially increase the higher education opportunities for Hispanic Americans.

(c) For the purpose of paragraph (b) of this section, the Secretary considers ''low-income'' to be an amount which does not exceed 150 percent of the amount equal to the poverty level as established by the United States Bureau of the Census.

(d) Each year, the Secretary notifies prospective applicants of the low-income figures through a notice published in the **Federal Register**.

(Authority: 20 U.S.C. 1101a and 1103a)

§ 606.4 What are low educational and general expenditures?

(a)(1) Except as provided in paragraph (b) of this section, for the purpose of § 606.2(a)(2), an applicant institution's average educational and general expenditures per full-time equivalent undergraduate student in the base year must be less than the average educational and general expenditures per full-time equivalent undergraduate student in that year of comparable institutions that offer similar instruction.

(2) For the purpose of paragraph (a)(1) of this section, the Secretary determines the average educational and general expenditure per full-time equivalent undergraduate student for institutions with graduate students that do not differentiate between graduate and undergraduate educational and general expenditures by discounting the graduate enrollment using a factor of 2.5 times the number of graduate students.

(b) Each year, the Secretary notifies prospective applicants through a notice in the **Federal Register** of the average educational and general expenditures per full-time equivalent undergraduate student at comparable institutions that offer similar instruction.

(c) The Secretary may waive the requirement contained in paragraph (a) of this section, if the Secretary determines, based upon persuasive evidence provided by the institution, that—

(1) The institution's failure to satisfy the criteria in paragraph (a) of this section was due to factors which, if used in determining compliance with those criteria, distorted that determination; and

(2) The institution's designation as an eligible institution under this part is otherwise consistent with the purposes of this part.

(d) For the purpose of paragraph (c)(1) of this section, the Secretary considers that the following factors may distort an institution's educational and general expenditures per full-time equivalent undergraduate student—

(1) Low student enrollment;

(2) Location of the institution in an unusually high cost-of-living area;

(3) High energy costs;

(4) An increase in State funding that was part of a desegregation plan for higher education; or

(5) Operation of high cost professional schools such as medical or dental schools.

(Authority: 20 U.S.C. 1101a and 1103a)

§ 606.5 How does an institution apply to be designated an eligible institution?

(a) An institution applies to the Secretary to be designated an eligible institution under this part by first submitting an application to the Secretary in the form, manner, and time established by the Secretary. The application must contain—

(1) The information necessary for the Secretary to determine whether the institution satisfies the requirements of §§ 606.2, 606.3(a), and 606.4(a);

(2) Any waiver request under §§ 606.3(b) and 606.4(c); and

(3) Information or explanations justifying any requested waiver.

(b) An institution that wishes to receive a grant under this part must submit, as part of its application for that grant, an assurance that when it submits its application—

(1) Its enrollment of undergraduate full-time equivalent students is at least 25 percent Hispanic students; and

(2) Not less than 50 percent of its Hispanic students are low-income individuals.

(Authority: 20 U.S.C. 1101a and 1103)

§ 606.6 What regulations apply?

The following regulations apply to the Developing Hispanic-Serving Institutions Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs), except 34 CFR 75.128(a)(2) and 75.129(a) in the case of applications for cooperative arrangements.

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 82 (New Restrictions on Lobbying).

(6) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(7) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 606.

(Authority: 20 U.S.C. 1101 *et seq.*)

§ 606.7 What definitions apply?

(a) *Definitions in EDGAR.* The terms used in this part are defined in 34 CFR 77.1:

EDGAR
Fiscal year
Grant
Grantee
Grant period
Nonprofit
Private
Project period
Public
Secretary
State

(b) The following definitions also apply to this part:

Accredited means the status of public recognition which a nationally recognized accrediting agency or association grants to an institution which meets certain established qualifications and educational standards.

Activity means an action that is incorporated into an implementation plan designed to meet one or more objectives. An activity is a part of a project and has its own budget that is approved to carry out the objectives of that subpart.

Base year means the second fiscal year preceding the fiscal year for which an institution seeks a grant under this part.

Branch campus means a unit of a college or university that is

geographically apart from the main campus of the college or university and independent of that main campus. The Secretary considers a unit of a college or university to be independent of the main campus if the unit—

(1) Is permanent in nature;

(2) Offers courses for credit and programs leading to an associate or bachelor's degree; and

(3) Is autonomous to the extent that it has—

(i) Its own faculty and administrative or supervisory organization; and

(ii) Its own budgetary and hiring authority.

Comparable institutions that offer similar instruction means institutions that are being compared with an applicant institution and that fall within one of the following four categories—

(1) Public junior or community colleges;

(2) Private nonprofit junior or community colleges;

(3) Public institutions that offer an educational program for which they offer a bachelor's degree; or

(4) Private nonprofit institutions that offer an educational program for which they offer a bachelor's degree.

Cooperative arrangement means an arrangement to carry out allowable grant activities between an institution eligible to receive a grant under this part and another eligible or ineligible institution of higher education, under which the resources of the cooperating institutions are combined and shared to better achieve the purposes of this part and avoid costly duplication of effort.

Degree student means a student who enrolls at an institution for the purpose of obtaining the degree, certificate, or other recognized educational credential offered by that institution.

Developmental program and services means new or improved programs and services, beyond those regularly budgeted, specifically designed to improve the self sufficiency of the school.

Educational and general expenditures means the total amount expended by an institution of higher education for instruction, research, public service, academic support (including library expenditures), student services, institutional support, scholarships and fellowships, operation and maintenance expenditures for the physical plant, and any mandatory transfers which the institution is required to pay by law.

Educationally disadvantaged means a college student who requires special services and assistance to enable them to succeed in higher education. The phrase includes, but is not limited to, students who come from—

(1) Economically disadvantaged families;

(2) Limited English proficiency families;

(3) Migrant worker families; or

(4) Families in which one or both of their parents have dropped out of secondary school.

Federal Pell Grant Program means the grant program authorized by title IV–A–1 of the HEA.

Federal Perkins Loan Program, formerly called the National Direct Student Loan Program, means the loan program authorized by title IV–E of the HEA.

Federal Supplemental Education Opportunity Grant Program means the grant program authorized by title IV–A–3 of the HEA.

Federal Work-Study Program means the part-time employment program authorized under title IV–C of the HEA.

Full-time equivalent students means the sum of the number of students enrolled full-time at an institution, plus the full-time equivalent of the number of students enrolled part time (determined on the basis of the quotient of the sum of the credit hours of all part-time students divided by 12) at such institution.

HEA means the Higher Education Act of 1965, as amended.

Hispanic student means a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

Institution of higher education means an educational institution defined in section 101 of the HEA.

Junior or community college means an institution of higher education—

(1) That admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution;

(2) That does not provide an educational program for which it awards a bachelor's degree (or an equivalent degree); and

(3) That—

(i) Provides an educational program of not less than 2 years that is acceptable for full credit toward such a degree; or

(ii) Offers a 2-year program in engineering, mathematics, or the physical or biological sciences, designed to prepare a student to work as a technician or at the semiprofessional level in engineering, scientific, or other technological fields requiring the understanding and application of basic engineering, scientific, or mathematical principles of knowledge.

Low-income individual means an individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of the Census.

Minority student means a student who is an Alaska Native, American Indian, Asian-American, Black (African-American), Hispanic American, Native Hawaiian, or Pacific Islander.

Nationally recognized accrediting agency or association means an accrediting agency or association that the Secretary has recognized to accredit or preaccredit a particular category of institution in accordance with the provisions contained in 34 CFR part 603. The Secretary periodically publishes a list of those nationally recognized accrediting agencies and associations in the **Federal Register**.

Operational programs and services means the regular, ongoing budgeted programs and services at an institution.

Preaccredited means a status that a nationally recognized accrediting agency or association, recognized by the Secretary to grant that status, has accorded an unaccredited institution that is progressing toward accreditation within a reasonable period of time.

Project means all the funded activities under a grant.

Self-sufficiency means the point at which an institution is able to survive without continued funding under the Developing Hispanic-Serving Institutions Program.

Underrepresented means proportionate representation as measured by degree recipients, that is less than the proportionate representation in the general population—

(1) As indicated by—

(i) The most current edition of the Department's *Digest of Educational Statistics;*

(ii) The National Research Council's *Doctorate Recipients from United States Universities;* or

(iii) Other standard statistical references, as announced annually in the **Federal Register** notice inviting applications for new awards under this program; or

(2) As documented by national survey data submitted to and accepted by the Secretary on a case-by-case basis.

(Authority: 20 U.S.C. 1101 *et seq.*; OMB Directive No. 15)

§ 606.8 What is a comprehensive development plan and what must it contain?

(a) A comprehensive development plan is an institution's strategy for achieving growth and self-sufficiency by strengthening its—

(1) Academic programs;
(2) Institutional management; and
(3) Fiscal stability.

(b) The comprehensive development plan must include the following:

(1) An analysis of the strengths, weaknesses, and significant problems of the institution's academic programs, institutional management, and fiscal stability.

(2) A delineation of the institution's goals for its academic programs, institutional management, and fiscal stability, based on the outcomes of the analysis described in paragraph (b)(1) of this section.

(3) Measurable objectives related to reaching each goal and timeframes for achieving the objectives.

(4) Methods and resources that will be used to institutionalize practices and improvements developed under the proposed project.

(5) Its five year plan to improve its services to Hispanic and other low-income students.

(Authority: 20 U.S.C. 1101 *et seq.*)

§ 606.9 What are the type, duration, and limitations in the awarding of grants under this part?

(a)(1) Under this part, the Secretary may award planning grants and two types of development grants, individual development grants and cooperative arrangement development grants.

(2) Planning grants may be awarded for a period not to exceed one year.

(3) Either type of development grant may be awarded for a period of five years.

(b)(1) An institution that received an individual development grant of five years may not subsequently receive another individual development grant for a period of two years from the date on which the five-year grant terminates.

(2) A cooperative arrangement grant is not considered to be an individual development grant under paragraph (b)(1) of this section.

(Authority: 20 U.S.C. 1101c and 1103c)

§ 606.10 What activities may and may not be carried out under a grant?

(a) *Planning grants.* Under a planning grant, a grantee shall formulate—

(1) A comprehensive development plan described in § 606.8; and

(2) An application for a development grant.

(b) *Development grants—allowable activities.* Under a development grant, except as provided in paragraph (c) of this section, a grantee shall carry out activities that implement its comprehensive development plan and hold promise for strengthening the institution. Activities that may be carried out include, but are not limited to—

(1) Purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes.

(2) Construction, maintenance, renovation, and improvement in classrooms, libraries, laboratories, and other instructional facilities.

(3) Support of faculty exchanges, faculty development, curriculum development, academic instruction, and faculty fellowships to assist in attaining advanced degrees in the fellow's field of instruction.

(4) Purchase of library books, periodicals, and other educational materials, including telecommunications program material.

(5) Tutoring, counseling, and student service programs designed to improve academic success.

(6) Funds management, administrative management, and acquisition of equipment for use in strengthening funds management.

(7) Joint use of facilities, such as laboratories and libraries.

(8) Establishing or improving a development office to strengthen or improve contributions from alumni and the private sector.

(9) Establishing or improving an endowment fund, provided the grantee uses no more than 20 percent of its grant funds for this purpose and at least matches those grant funds with non-Federal funds.

(10) Creating or improving facilities for Internet or other distance learning academic instruction capabilities, including purchase or rental of telecommunications technology equipment or services.

(11) Establishing or enhancing a program of teacher education designed to qualify students to teach in public elementary or secondary schools.

(12) Establishing community outreach programs that will encourage elementary school and secondary school students to develop the academic skills and the interest to pursue postsecondary education.

(13) Expanding the number of Hispanic and other underrepresented graduate and professional students that can be served by the institution by expanding courses and institutional resources.

(14) Other activities that contribute to carrying out the purposes of this program.

(c) *Development grants—unallowable activities.* A grantee may not carry out the following activities or pay the following costs under a development grant:

(1) Activities that are not included in the grantee's approved application.

(2) Activities that are inconsistent with any State plan for higher education that is applicable to the institution, including, but not limited to, a State plan for desegregation of higher education.

(3) Activities or services that relate to sectarian instruction or religious worship.

(4) Activities provided by a school or department of divinity. For the purpose of this provision, a ''school or department of divinity'' means an institution, or a department of an institution, whose program is specifically for the education of students to prepare them to become ministers of religion or to enter into some other religious vocation or to prepare them to teach theological subjects.

(5) Developing or improving non-degree or non-credit courses other than basic skills development courses.

(6) Developing or improving community-based or community services programs, unless the program provides academic-related experiences or academic credit toward a degree for degree students, or, unless it is a program or services to encourage elementary and secondary school students to develop the academic skills and the interest to pursue postsecondary education.

(7) Purchase of standard office equipment, such as furniture, file cabinets, bookcases, typewriters, or word processors.

(8) Payment of any portion of the salary of a president, vice president, or equivalent officer who has college-wide administrative authority and responsibility at an institution to fill a position under the grant such as project coordinator or activity director.

(9) Costs of organized fund-raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions.

(10) Costs of student recruitment such as advertisements, literature, and college fairs.

(11) Services to high school students, unless they are services to encourage such students to develop the skills and the interest to pursue postsecondary education.

(12) Instruction in the institution's standard courses as indicated in the institution's catalog.

(13) Costs for health and fitness programs, transportation, and day care services.

(14) Student activities such as entertainment, cultural, or social enrichment programs, publications, social clubs, or associations.

(15) Activities that are operational in nature rather than developmental in nature.

(Authority: 20 U.S.C. 1101 *et seq.*)

Subpart B—How Does an Institution Apply for a Grant?

§ 606.11 What must be included in individual development grant applications?

In addition to the information needed by the Secretary to determine whether the institution should be awarded a grant under the funding criteria contained in subpart C, an application for a development grant must include—

(a) The institution's comprehensive development plan;

(b) A description of the relationship of each activity for which grant funds are requested to the relevant goals and objectives of its plan;

(c) A description of any activities that were funded under previous development grants awarded under the Developing Hispanic-Serving Institutions Program that expired within five years of when the development grant will begin and the institution's justification for not completing the activities under the previous grant, if applicable;

(d) If the applicant is applying to carry out more than one activity—

(1) A description of those activities that would be a sound investment of Federal funds if funded separately;

(2) A description of those activities that would be a sound investment of Federal funds only if funded with the other activities; and

(3) A ranking of the activities in preferred funding order.

(Approved by the Office of Management and Budget under control number 1840–0114)

(Authority: 20 U.S.C. 1101 *et seq.*)

§ 606.12 What must be included in cooperative arrangement grant applications?

(a)(1) Institutions applying for a cooperative arrangement grant shall submit only one application for that grant regardless of the number of institutions participating in the cooperative arrangement.

(2) The application must include the names of each participating institution, the role of each institution, and the rationale for each eligible participating institution's decision to request grant funds as part of a cooperative arrangement rather than as an individual grantee.

(b) If the application is for a development grant, the application must contain—

(1) Each participating institution's comprehensive development plan;

(2) The information required under § 606.11; and

(3) An explanation from each eligible participating institution of why participation in a cooperative arrangement grant rather than performance under an individual grant will better enable it to meet the goals and objectives of its comprehensive development plan at a lower cost.

(4) The name of the applicant for the group that is legally responsible for—

(i) The use of all grant funds; and

(ii) Ensuring that the project is carried out by the group in accordance with Federal requirements. (Approved by the Office of Management and Budget under control number 1840–0114)

(Authority: 20 U.S.C. 1103 and 1103e)

§ 606.13 How many applications for a development grant may an institution submit?

In any fiscal year, an institution of higher education may—

(a) Submit an application for an individual development grant; and

(b) Be part of a cooperative arrangement application.

(Authority: 20 U.S.C. 1101 *et seq.*)

Subpart C—How Does the Secretary Make an Award?

§ 606.20 How does the Secretary choose applications for funding?

(a) The Secretary evaluates an application on the basis of the criteria in—

(1) Sections 606.21 and 606.23 for a planning grant; and

(2) Sections 606.22, 606.23, 600.24, and 606.25 for a development grant.

(b)(1) The Secretary awards up to 100 points for the criteria in § 606.21 and up to 100 points for the criteria in § 606.22.

(2) The maximum possible score for each complete criterion is in parentheses.

(c)(1) The Secretary considers funding an application for a planning grant that scores at least 50 points under § 606.21.

(2) The Secretary considers funding an application for a development grant that—

(i) Scores at least 50 points under § 606.22;

(ii) Is submitted with a comprehensive development plan that satisfies all the elements required of such a plan under § 606.8; and

(iii) In the case of an application for a cooperative arrangement grant, demonstrates that the grant will enable each eligible participant to meet the goals and objectives of its comprehensive development plan better and at a lower cost than if each eligible participant were funded individually.

(Authority: 20 U.S.C. 1101 *et seq.*)

§ 606.21 What are the selection criteria for planning grants?

The Secretary uses the following criteria to evaluate an application to determine whether the applicant will produce a good comprehensive development plan and a fundable application:

(a) *Design of the planning process.* (Total: 60 points) The Secretary reviews each application to determine the quality of the planning process that the applicant will use to develop a comprehensive development plan and an application for a development grant based on the extent to which—

(1) The planning process is clearly and comprehensively described and based on sound planning practice (15 points);

(2) The president or chief executive officer, administrators and other institutional personnel, students, and governing board members systematically and consistently will be involved in the planning process (15 points);

(3) The applicant will use its own resources to help implement the project (10 points); and

(4) The planning process is likely to achieve its intended results (20 points).

(b) *Key personnel.* (Total: 20 points) The Secretary reviews each application to determine the quality of key personnel to be involved in the project based on the extent to which—

(1) The past experience and training of key personnel such as the project coordinator and persons who have key roles in the planning process are suitable to the tasks to be performed (10 points); and

(2) The time commitments of key personnel are adequate (10 points).

(c) *Project Management.* (Total: 15 points) The Secretary reviews each application to determine the quality of the plan to manage the project effectively based on the extent to which—

(1) The procedures for managing the project are likely to ensure effective and efficient project implementation (10 points); and

(2) The project coordinator has sufficient authority, including access to the president or chief executive officer, to conduct the project effectively (5 points).

(d) *Budget.* (Total: 5 points) The Secretary reviews each application to

determine the extent to which the proposed project costs are necessary and reasonable. (Approved by the Office of Management and Budget under control number 1840–0114)

(Authority: 20 U.S.C. 1101 *et seq.*)

§ 606.22 What are the selection criteria for development grants?

The Secretary uses the following criteria to evaluate applications for development grants:

(a) *Quality of the applicant's comprehensive development plan.* (Total: 30 points) The extent to which—

(1) The strengths, weaknesses, and significant problems of the institution's academic programs, institutional management, and fiscal stability are clearly and comprehensively analyzed and result from a process that involved major constituencies of the institution. (12 points);

(2) The goals for the institution's academic programs, institutional management, and fiscal stability are realistic and based on comprehensive analysis. (5 points);

(3) The objectives stated in the plan are measurable, related to institutional goals, and, if achieved, will contribute to the growth and self-sufficiency of the institution (5 points);

(4) The plan clearly and comprehensively describes the methods and resources the institution will use to institutionalize practice and improvements developed under the proposed project, including, in particular, how operational costs for personnel, maintenance, and upgrades of equipment will be paid with institutional resources (8 points).

(b) *Quality of activity objectives.* (Total: 10 points) The extent to which the objectives for each activity are—

(1) Realistic and defined in terms of measurable results (5 points); and

(2) Directly related to the problems to be solved and to the goals of the comprehensive development plan (5 points).

(c) *Quality of implementation strategy.* (Total: 25 points) The extent to which—

(1) The implementation strategy for each activity is comprehensive (10 points);

(2) The rationale for the implementation strategy for each activity is clearly described and is supported by the results of relevant studies or projects (10 points); and

(3) The timetable for each activity is realistic and likely to be attained (5 points).

(d) *Quality of key personnel.* (Total: 10 points) The extent to which—

(1) The past experience and training of key professional personnel are directly related to the stated activity objectives (7 points); and

(2) The time commitment of key personnel is realistic (3 points).

(e) *Quality of project management plan.* (Total: 10 points) The extent to which—

(1) Procedures for managing the project are likely to ensure efficient and effective project implementation (5 points); and

(2) The project coordinator and activity directors have sufficient authority to conduct the project effectively, including access to the president or chief executive officer (5 points).

(f) *Quality of evaluation plan.* (Total: 10 points) The extent to which—

(1) The data elements and the data collection procedures are clearly described and appropriate to measure the attainment of activity objectives and to measure the success of the project in achieving the goals of the comprehensive development plan (5 points); and

(2) The data analysis procedures are clearly described and are likely to produce formative and summative results on attaining activity objectives and measuring the success of the project on achieving the goals of the comprehensive development plan (5 points).

(g) *Budget.* (Total: 5 points) The extent to which the proposed costs are necessary and reasonable in relation to the project's objectives and scope. (Approved by the Office of Management and Budget under control number 1840–0114)

(Authority: 20 U.S.C. 1101 *et seq.*)

§ 606.23 What special funding consideration does the Secretary provide?

(a) If funds are available to fund only one additional planning grant and each of the next fundable applications has received the same number of points under § 606.21, the Secretary awards additional points, up to a maximum of two points, to any of those applicants that—

(1) Has an endowment fund of which the current market value, per full-time equivalent enrolled student, is less than the average current market value of the endowment funds, per full-time equivalent enrolled student, at similar type institutions; (one point) or

(2) Has expenditures for library materials per full-time equivalent enrolled student which are less than the average expenditure for library materials per full-time equivalent enrolled student at similar type institutions. (one point)

(b) If funds are available to fund only one additional development grant and each of the next fundable applications has received the same number of points under § 606.22, the Secretary will award additional points, up to a maximum of three points, to any of those applicants that—

(1) Has an endowment fund of which the current market value, per full-time equivalent enrolled student, is less than the average current market value of the endowment funds, per full-time equivalent enrolled student, at comparable institutions that offer similar instruction; (one point)

(2) Has expenditures for library materials per full-time equivalent enrolled student that are less than the average expenditures for library materials per full-time equivalent enrolled student at comparable institutions that offer similar instruction (one point); or

(3) Propose to carry out one or more of the following activities—

(i) Faculty development;

(ii) Funds and administrative management;

(iii) Development and improvement of academic programs;

(iv) Acquisition of equipment for use in strengthening management and academic programs;

(v) Joint use of facilities; and

(vi) Student services. (one point)

(c) As used in this section, an ''endowment fund'' does not include any fund established or supported under 34 CFR part 628.

(d) Each year, the Secretary provides prospective applicants with the average market value of endowment funds and the average expenditure of library materials per full-time equivalent student.

(e) The Secretary gives priority to each application that contains satisfactory evidence that the applicant has entered into or will enter into a collaborative arrangement with at least one local educational agency or community-based organization to provide that agency or organization with assistance (from funds other than funds provided under this part) in—

(1) Reducing the dropout rates of Hispanic students;

(2) Improving rates of academic achievement of Hispanic students; and

(3) Increasing the rates at which Hispanic high school graduates enroll in higher education.

(Authority: 20 U.S.C. 1101 *et seq.*)

§ 606.24 How does the Secretary use an applicant's performance under a previous development grant when awarding a development grant?

(a)(1) In addition to evaluating an application under the selection criteria in § 606.22, the Secretary evaluates an applicant's performance under any previous development grant awarded under the Developing Hispanic-Serving Institutions Program that expired within five years of the year when the development grant will begin.

(2) The Secretary evaluates whether the applicant fulfilled, or is making substantial progress toward fulfilling, the goals and objectives of the previous grant, including, but not limited to, the applicant's success in institutionalizing practices developed and improvements made under the grant.

(3) The Secretary bases the evaluation of the applicant's performance on information contained in—

(i) Performance and evaluation reports submitted by the applicant;

(ii) Audit reports submitted on behalf of the applicant; and

(iii) Other information obtained by the Secretary, including reports prepared by the Department.

(b) If the Secretary initially determines that the applicant did not fulfill the goals and objectives of a previous grant or is not making substantial progress towards fulfilling those goals and objectives, the Secretary affords the applicant the opportunity to respond to that initial determination.

(c) If the Secretary determines that the applicant did not fulfill the goals and objectives of a previous grant or is not making substantial progress towards fulfilling those goals and objectives, the Secretary may—

(1) Decide not to fund the applicant; or

(2) Fund the applicant but impose special grant terms and conditions, such as specific reporting and monitoring requirements.

(Authority: 20 U.S.C. 1101 *et seq.*)

§ 606.25 What priority does the Secretary use in awarding cooperative arrangement grants?

Among applications for cooperative arrangement grants, the Secretary gives priority to proposed cooperative arrangements that are geographically and economically sound, or will benefit the institutions applying for the grant.

(Authority: 20 U.S.C. 1101 *et seq.*)

Subpart D—What Conditions Must a Grantee Meet?

§ 606.30 What are allowable costs and what are the limitations on allowable costs?

(a) *Allowable costs.* Except as provided in paragraphs (b) and (c) of this section, a grantee may expend grant funds for activities that are related to carrying out the allowable activities included in its approved application.

(b) *Supplement and not supplant.* Grant funds shall be used so that they supplement and, to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant and in no case supplant those funds.

(c) *Limitations on allowable costs.* A grantee may not use an indirect cost rate to determine allowable costs under its grant.

(Authority: 20 U.S.C. 1101 *et seq.*)

§ 606.31 How does a grantee maintain its eligibility?

(a) A grantee shall maintain its eligibility under the requirements in § 606.2, except for § 606.2(a)(3) and (4), for the duration of the grant period.

(b) The Secretary reviews an institution's application for a continuation award to ensure that—

(1) The institution continues to meet the eligibility requirements described in paragraph (a) of this section; and

(2) The institution is making substantial progress toward achieving the objectives described in its grant application including, if applicable, the institution's success in institutionalizing practices and improvements developed under the grant.

(Authority: 20 U.S.C. 1101 *et seq.*)

PART 607—STRENGTHENING INSTITUTIONS PROGRAM

2. The authority citation for part 607 continues to read as follows:

Authority: 20 U.S.C. 1057–1059c, 1066–1069f, unless otherwise noted.

3. Section 607.2 is amended by revising paragraphs (c), (d), and (e); and by adding new paragraphs (f) and (g) to read as follows:

§ 607.2 What institutions are eligible to receive a grant under the Strengthening Institutions Program?

* * * * *

(c) For the purpose of paragraphs (e)(2) and (f)(2) of this section, an institution's enrollment consists of a head count of its entire student body.

(d) A tribal college or university may receive a grant authorized under section 316 of the HEA if—

(1) It satisfies the requirements of paragraph (a) of this section, other than § 607.2(a)(3), and

(2)(i) It meets the definition of the term ''tribally controlled college or university'' in section 2 of the Tribally Controlled College or University Assistance Act of 1978; or

(ii) It is listed in the Equity in Educational Land Grant Status Act of 1994.

(e) An Alaska Native-serving institution may receive a grant under section 317 of the HEA if—

(1) It satisfies the requirements of paragraph (a) of this section; and

(2) It has, at the time of application, an enrollment of undergraduate students that is at least 20 percent Alaska Native students.

(f) A Native Hawaiian-serving institution may receive a grant authorized under section 317 of the HEA if—

(1) It satisfies the requirements of paragraph (a) of this section; and

(2) It has, at the time of application, an enrollment of undergraduate students that is at least 10 percent Native Hawaiian students.

(g)(1) An institution that qualifies for a grant under the Strengthening Historically Black Colleges and Universities Program (34 CFR part 608) or the Developing Hispanic-Serving Institutions Program (34 CFR part 606) and receives a grant under either of these programs for a particular fiscal year is not eligible to receive a grant under this part for the same fiscal year.

(2) A tribal college or university that receives a grant under section 316 of the HEA or an Alaska Native or Native Hawaiian-serving institution that receives a grant under section 317 of the HEA may not concurrently receive other grant funds under the Strengthening Institutions Program, Strengthening Historically Black Colleges and Universities Program, or Strengthening Historically Black Graduate Institutions Program.

4. Section 607.3 is amended by removing the word ''or'' at the end of paragraph (b)(5); redesignating paragraph (b)(6) as paragraph (b)(7); and adding a new paragraph (b)(6) to read as follows:

§ 607.3 What is an enrollment of needy students?

* * * * *

(b) * * *

(6) It is a tribal college or university; or

* * * * *

5. Section 607.7 is amended by:

A. Revising paragraph (b);

B. Redesignating paragraph (c) as paragraph (e);

C. adding new paragraphs (c) and (d);

D. Rmoving the definitions of ''College Work-Study Program'', ''Pell Grant Program'', ''Perkins Loan Program'', ''Special Needs Program'', and ''Supplemental Education Opportunity Grant'' from newly designated paragraph (e);

E. Revising the definition of ''Institution of higher education'' in newly designated paragraph (e); and

F. Adding, in alphabetical order, new definitions of ''Federal Pell Grant Program'', ''Federal Perkins Loan Program'', ''Federal Supplemental Education Opportunity Grant Program'', ''Federal Work-Study Program'', and ''Low-income individual'' in newly redesignated paragraph (e).

The revisions and additions read as follows:

§ 607.7 What definitions apply?

* * * * *

(b) The following term used in this part is defined in section 312 of the HEA:

Endowment fund

(c) The following terms used in this part are defined in section 316 of the HEA:

Indian
Indian tribe
Tribal college or university

(d) The following terms used in this part are defined in section 317 of the HEA:

Alaska Native
Alaska Native-serving institution
Native Hawaiian
Native Hawaiian-serving institution

(e) * * *

Federal Pell Grant Program means the grant program authorized by title IV–A–1 of the HEA.

Federal Perkins Loan Program, formerly called the National Direct Student Loan Program, means the loan program authorized by title IV–E of the HEA.

Federal Supplemental Education Opportunity Grant Program means the grant program authorized by title IV–A–3 of the HEA.

Federal Work-Study Program means the part-time employment program authorized under title IV–C of the HEA.

* * * * *

Institution of higher education means an educational institution defined in section 101 of the HEA.

* * * * *

Low-income individual means an individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of Census.

* * * * *

6. Section 607.8(b) is amended by adding paragraphs (b)(5) and (b)(6) to read as follows:

§ 607.8 What is a comprehensive development plan and what must it contain?

* * * * *

(b) * * *

(5) For a grant under section 316 of the HEA to a tribal college or university, its five-year plan for improving its services to Indian students, increasing the rates at which Indian secondary school students enroll in higher education, and increasing overall postsecondary retention rates for Indian students.

(6) For a grant under section 317 of the HEA to an Alaska Native-serving institution or to a Native Hawaiian-serving institution, its five-year plan for improving its services to Alaska Native or Native Hawaiian students, respectively.

7. Section 607.9 is amended by revising paragraph (b) to read as follows:

§ 607.9 What are the type, duration and limitations in the awarding of grants under this part?

* * * * *

(b)(1) An institution that received an individual development grant of five years may not subsequently receive another individual development grant for a period of two years from the date on which the five-year grant period terminates.

(2) A cooperative arrangement grant is not considered to be an individual development grant under paragraph (b)(1) of this section.

8. Section 607.10 is amended by:

A. Revising paragraph (b)(1) introductory text;

B. Removing the word ''or'' at the end of paragraph (b)(7);

C. Redesignating paragraph (b)(8) as paragraph (b)(13);

D. Adding new paragraphs (b)(8) through (12) and (b)(14);

E. Revising the introductory text in newly designated paragraph (b)(13) and paragraphs (b)(13)(ii), (v), and (viii);

F. Removing the word ''and'' at the end of newly designated paragraph (b)(13)(vii);

G. Adding new paragraphs (b)(13)(ix) through (xiii); and

H. Revising paragraphs (c)(6) and (11).

The revisions and additions read as follows:

§ 607.10 What activities may and may not be carried out under a grant?

* * * * *

(b) * * *

(1) Faculty exchanges, faculty fellowships, and faculty development that provide faculty with the skills and knowledge needed to—

* * * * *

(8) Purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes;

(9) Construction, maintenance, renovation, and improvement in classrooms, libraries, laboratories, and other instructional facilities, including the integration of computer technology into institutional facilities to create smart buildings;

(10) Establishing or improving a development office to strengthen or improve contributions from alumni and the private sector;

(11) Establishing or improving an endowment fund, provided a grantee uses no more than 20 percent of its grant funds for this purpose and at least matches those grant funds with non-Federal funds;

(12) Creating or improving facilities for Internet or other distance learning academic instruction capabilities, including purchase or rental of telecommunications technology equipment or services;

(13) For grants authorized under section 316 of the HEA to tribal colleges or universities—

* * * * *

(ii) Construction, maintenance, renovation, and improvement in classroom, library, laboratory, and other instructional facilities, including purchase or rental of telecommunications technology equipment or services;

* * * * *

(v) Purchase of library books, periodicals, microfilm, and other educational materials, including telecommunications program materials;

* * * * *

(viii) Academic tutoring and counseling programs and student support services designed to improve academic services;

(ix) Academic instruction in disciplines in which Indians are underrepresented;

(x) Establishing or improving a development office to strengthen or improve contributions from the alumni and the private sector;

(xi) Establishing or enhancing a program of teacher education designed to qualify students to teach in elementary schools or secondary schools, with a particular emphasis on teaching Indian children and youth, that shall include, as part of such program, preparation for teacher certification;

(xii) Establishing community outreach programs that encourage Indian elementary school and secondary school students to develop the academic skills and the interest to pursue postsecondary education; and

(xiii) Establishing or improving an endowment fund, provided a grantee uses no more than 20 percent of its grant funds for this purpose and at least matches those grant funds with non-Federal funds; or

(14) For grants authorized under section 317 of the HEA to Alaska Native-serving institutions and Native Hawaiian-serving institutions—

(i) Purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes;

(ii) Renovation and improvement in classroom, library, laboratory, and other instructional facilities;

(iii) Support of faculty exchanges, faculty development, and faculty fellowships to assist in attaining advanced degrees in the faculty's field of instruction;

(iv) Curriculum development and academic instruction;

(v) Purchase of library books, periodicals, microfilm, and other educational materials;

(vi) Funds and administrative management, and acquisition of equipment for use in strengthening funds management;

(vii) Joint use of facilities such as laboratories and libraries;

(viii) Academic tutoring and counseling programs and student support services.

(c) * * *

(6) Developing or improving community-based or community services programs, unless the program provides academic-related experiences or academic credit toward a degree for degree students, or unless it is an outreach program that encourages Indian elementary school and secondary school students to develop the academic skills and the interest to pursue postsecondary education.

* * * * *

(11) Services to high school students, unless they are part of a program to encourage Indian students to develop the academic skills and the interest to pursue postsecondary education.

* * * * *

9. Section 607.11 is amended by revising paragraphs (c) and (d); and removing paragraph (e) to read as follows:

§ 607.11 What must be included in individual development grant applications?

* * * * *

(c) A description of any activities that were funded under previous development grants awarded under the Strengthening Institutions Program that expired within five years of when the development grant will begin and the institution's justification for not completing the activities under the previous grant, if applicable; and

(d) If the applicant is applying to carry out more than one activity—

(1) A description of those activities that would be a sound investment of Federal funds if funded separately;

(2) A description of those activities that would be a sound investment of Federal funds only if funded with the other activities; and

(3) A ranking of the activities in preferred funding order.

10. Section 607.13 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 607.13 How many applications for a development grant may an institution submit?

In any fiscal year, an institution of higher education that meets the eligibility requirements under sections 311, 316, and 317 of the HEA may—

(a) Submit an application for a development grant authorized under sections 311, 316, and 317 of the HEA; and

* * * * *

11. Section 607.20 is amended by revising paragraphs (a)(2) and (b)(1) to read as follows:

§ 607.20 How does the Secretary choose applications for funding?

(a) * * *

(2) Sections 607.22, 607.23, 607.24, and 607.25 for a development grant.

(b)(1) With regard to applicants that satisfy the requirements of paragraph (d) of this section, for each fiscal year, the Secretary awards individual development grants to applicants that are not individual development grantees under this part, before the Secretary awards an individual development grant to any applicant that is an individual grantee under this part.

* * * * *

§ 607.23 [Amended]

12. Section 607.23 is amended by removing the words ''is less than the average expenditure'', and adding, in their place, ''are less than the average expenditures'' in paragraph (b)(2); and by removing paragraph (e).

§ 607.24 [Amended]

13. Section 607.24 is amended by removing the words ''Strengthening Institutions and Special Needs Programs'', and adding, in their place ''the Strengthening Institutions Program'' in paragraph (a)(1).

[FR Doc. 99–32323 Filed 12–14–99; 8:45 am]

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federal register

Wednesday
December 15, 1999

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 2, 16, and 37

Federal Acquisition Regulation; Competition Under Multiple-Award Contracts; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 16, and 37

[FAR Case 1999–014]

RIN 9000–AI53

Federal Acquisition Regulation; Competition Under Multiple-Award Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to clarify what contracting officers should consider when planning for multiple awards of indefinite-delivery contracts and clarify how orders should be placed against the resultant contracts.

DATES: Interested parties should submit comments in writing on or before February 14, 2000 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Address e-mail comments submitted via the Internet to: farcase.1999–014@gsa.gov.

Please submit comments only and cite FAR case 1999–014 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAR case 1999–014.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed rule amends FAR Part 16 to provide policy on multiple-award task and delivery-order contracts; amends FAR Part 37 to delete a definition; and amends FAR Part 2 to insert the definition that was deleted from Part 37. The proposed rule also clarifies the FAR's current implementation of sections 1004 and 1054 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 104–355). The rule reinforces key principles regarding the structure, administration, and use of multiple award task and delivery order contracts, such as the expectation of providing awardees a fair opportunity to be considered for orders throughout the life of the contract. The rule provides policy that clarifies what contracting officers should consider when planning for multiple award of indefinite-delivery contracts and clarifies how orders should be placed against the resultant contracts.

The rule continues to provide contracting officers broad discretion. It includes streamlined ordering processes that provide effective, flexible, and timely solutions for agency requirements through orders placed under multiple award task or delivery order contracts.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only clarifies what the contracting officer should consider when planning for and placing orders under multiple-award contracts. Therefore, we have not prepared an Initial Regulatory Flexibility Analysis. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR subparts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 1999–014), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 16, and 37:

Government procurement.

Dated: December 9, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR Parts 2, 16, and 37 be amended as set forth below:

1. The authority citation for 48 CFR Parts 2, 16, and 37 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by adding, in alphabetical order, the definition ''Advisory and assistance services'' to read as follows:

2.101 Definitions.

* * * * *

Advisory and assistance services means those services provided under contract by nongovernmental sources to support or improve: organizational policy development; decision-making; management and administration; program and/or project management and administration; or R&D activities. It can also mean the furnishing of professional advice or assistance rendered to improve the effectiveness of Federal management processes or procedures (including those of an engineering and technical nature). In rendering the foregoing services, outputs may take the form of information, advice, opinions, alternatives, analyses, evaluations, recommendations, training and the day-to-day aid of support personnel needed for the successful performance of ongoing Federal operations. All advisory and assistance services are classified in one of the following definitional subdivisions:

(a) Management and professional support services, *i.e.*, contractual services that provide assistance, advice or training for the efficient and effective management and operation of organizations, activities (including management and support services for R&D activities), or systems. These services are normally closely related to the basic responsibilities and mission of the agency originating the requirement for the acquisition of services by contract. Included are efforts that support or contribute to improved organization of program management, logistics management, project monitoring and reporting, data collection, budgeting, accounting, performance auditing, and administrative technical support for conferences and training programs.

(b) Studies, analyses and evaluations, *i.e.*, contracted services that provide organized, analytical assessments/evaluations in support of policy development, decision-making, management, or administration. Included are studies in support of R&D activities. Also included are acquisitions of models, methodologies, and related software supporting studies, analyses or evaluations.

(c) Engineering and technical services, *i.e.*, contractual services used to support the program office during the acquisition cycle by providing such services as systems engineering and technical direction (see 9.505–1(b)) to ensure the effective operation and maintenance of a weapon system or major system as defined in OMB Circular No. A–109 or to provide direct support of a weapon system that is essential to research, development, production, operation or maintenance of the system.

* * * * *

PART 16—TYPES OF CONTRACTS

3. Revise section 16.500 to read as follows:

16.500 Scope of subpart.

(a) This subpart prescribes policies and procedures for making awards of indefinite-delivery contracts and establishes a preference for making multiple awards of indefinite-quantity contracts.

(b) This subpart does not limit the use of other than competitive procedures authorized by part 6.

(c) Nothing in this subpart restricts the authority of the General Services Administration (GSA) to enter into schedule, multiple award, or task or delivery order contracts under any other provision of law. Therefore, GSA regulations and the coverage for the Federal Supply Schedule program in subpart 8.4 and part 38 take precedence over this subpart.

(d) The multiple award preference established by this subpart does not apply to architect-engineer contracts subject to the procedures in subpart 36.6. However, agencies are not precluded from making multiple awards for architect-engineer services using the procedures in this subpart, provided the selection of contractors and placement of orders are consistent with subpart 36.6.

16.501–1 [Amended]

4. Amend section 16.501–1 by removing the definition ''Advisory and assistance services.''

5. Revise section 16.504 to read as follows:

16.504 Indefinite-quantity contracts.

(a) *Description.* An indefinite-quantity contract provides for an indefinite quantity, within stated limits, of supplies or services during a fixed period. The Government places orders for individual requirements. Quantity limits may be stated as number of units or as dollar values.

(1) The contract must require the Government to order and the contractor to furnish at least a stated minimum quantity of supplies or services. In addition, if ordered, the contractor must furnish any additional quantities, not to exceed the stated maximum. The contracting officer should establish a reasonable maximum quantity based on market research, trends on recent contracts for similar supplies or services, survey of potential users, or any other rational basis.

(2) To ensure that the contract is binding, the minimum quantity must be more than a nominal quantity, but it should not exceed the amount that the Government is fairly certain to order.

(3) The contract may also specify maximum or minimum quantities that the Government may order under each task or delivery order and the maximum that it may order during a specific period of time.

(4) A solicitation and contract for an indefinite quantity must—

(i) Specify the period of the contract, including the number of options and any period for which the Government may extend the contract under each option;

(ii) Specify the total minimum and maximum quantity of supplies or services the Government will acquire under the contract;

(iii) Include a statement of work, specifications, or other description, that reasonably describes the general scope, nature, complexity, and purpose of the supplies or services the Government will acquire under the contract in a manner that will enable a prospective offeror to decide whether to submit an offer;

(iv) State the procedures that the Government will use in issuing orders and, if multiple awards may be made, state the procedures and selection criteria that the Government will use to provide awardees a fair opportunity to be considered for each order (see 16.505(b)(1));

(v) Include the name, address, telephone number, facsimile number, and e-mail address of the agency task and delivery order ombudsman (see 16.505(b)(5)) if multiple awards may be made;

(vi) Include a description of the activities authorized to issue orders; and

(vii) Include authorization for placing oral orders, if appropriate, provided that the Government has established procedures for obligating funds and that oral orders are confirmed in writing.

(b) *Application.* Contracting officers may use an indefinite-quantity contract when the Government cannot predetermine, above a specified minimum, the precise quantities of supplies or services that the Government will require during the contract period, and it is inadvisable for the Government to commit itself for more than a minimum quantity. The contracting officer should use an indefinite-quantity contract only when a recurring need is anticipated.

(c) *Multiple award preference*—(1) *Planning the acquisition.* (i) Except for indefinite-quantity contracts for advisory and assistance services as provided in paragraph (c)(2) of this section, the contracting officer must, to the maximum extent practicable, give preference to making multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources.

(ii)(A) The contracting officer must determine whether multiple awards are appropriate as part of acquisition planning. The contracting officer must avoid situations in which awardees specialize exclusively in one or a few areas within the broader statement of work, thus creating the likelihood that tasks in those areas will be awarded on a sole-source basis; however, each awardee need not be capable of performing every requirement as well as any other awardee under the contracts. The contracting officer should consider the following when determining the number of contracts to be awarded:

(*1*) The scope and complexity of the contract requirement.

(*2*) The expected duration and frequency of task or delivery orders.

(*3*) The mix of resources a contractor must have to perform expected task or delivery order requirements.

(*4*) The ability to maintain competition among the awardees throughout the contracts' period of performance.

(B) The contracting officer must not use the multiple award approach if—

(*1*) Only one contractor is capable of providing performance at the level of quality required because the supplies or services are unique or highly specialized;

(*2*) Based on the contracting officer's knowledge of the market, more favorable terms and conditions, including pricing, will be provided if a single award is made;

(*3*) The expected cost of administration of multiple contracts outweighs the expected benefits of making multiple awards;

(*4*) The projected task orders are so integrally related that only a single contractor can reasonably perform the work;

(*5*) The total estimated value of the contract is less than the simplified acquisition threshold; or

(*6*) Multiple awards would not be in the best interests of the Government.

(C) The contracting officer must document the decision in a written acquisition plan or a separate written determination. The contracting officer may determine that a class of acquisitions is not appropriate for multiple awards (see subpart 1.7).

(2) *Contracts for advisory and assistance services.* (i) Except as provided in paragraph (c)(2)(ii) of this section, if an indefinite-quantity contract for advisory and assistance services exceeds 3 years and $10 million, including all options, the contracting officer must make multiple awards unless—

(A) The contracting officer or other official designated by the head of the agency determines in writing, before the solicitation is issued, that multiple awards are not practicable. The contracting officer or other official must determine that the scope of work is unique or highly specialized or the tasks so integrally related that only one contractor can reasonably perform the work;

(B) The contracting officer or other official designated by the head of the agency determines in writing, after the evaluation of offers, that only one offeror is capable of providing the services required at the level of quality required; or

(C) Only one offer is received.

(ii) The requirements of paragraph (c)(2)(i) of this section do not apply if the contracting officer or other official designated by the head of the agency determines that the advisory and assistance services are incidental and not a significant component of the contract.

6. Revise section 16.505 to read as follows:

16.505 Ordering.

(a) *General.* (1) The contracting officer does not synopsize orders under indefinite-delivery contracts.

(2) Individual orders must clearly describe all services to be performed or supplies to be delivered. Orders must be within the scope, period, and maximum value of the contract.

(3) Performance-based work statements must be used to the maximum extent practicable, if the contract is for services (see 37.102(a)).

(4) Orders may be placed by using any medium specified in the contract.

(5) Orders placed under indefinite-delivery contracts must contain the following information:

(i) Date of order.

(ii) Contract number and order number.

(iii) For supplies and services, contract item number and description, quantity, and unit price or estimated cost or fee.

(iv) Delivery or performance schedule.

(v) Place of delivery or performance (including consignee).

(vi) Any packaging, packing, and shipping instructions.

(vii) Accounting and appropriation data.

(viii) Method of payment and payment office, if not specified in the contract (see 32.1110(e)).

(6) No protest under subpart 33.1 is authorized in connection with the issuance or proposed issuance of an order under a task-order contract or delivery-order contract, except for a protest on the grounds that the order increases the scope, period, or maximum value of the contract (10 U.S.C. 2304c(d) and 41 U.S.C. 303J(d)).

(b) *Orders under multiple award contracts*—(1) *Fair opportunity.* (i) The contracting officer must provide each awardee a fair opportunity to be considered for each order over $2,500 issued under multiple delivery-order contracts or multiple task-order contracts, except as provided for in paragraph (b)(2) of this section.

(ii) The contracting officer may exercise broad discretion in developing appropriate procedures. The competition requirements in part 6 and the policies in subpart 15.3 do not apply to the ordering process. However, the contracting officer must—

(A) Develop procedures that will provide each awardee a fair opportunity to be considered for each order and that reflect the requirement and other aspects of the contracting environment;

(B) Not use any method (such as allocation or designation of any preferred awardee) that would not result in fair consideration being given to all awardees prior to placing each order;

(C) Tailor the procedures to each acquisition;

(D) Include the procedures in the solicitation and the contract; and

(E) Consider price or cost under each order as one of the factors in the selection decision.

(iii) The contracting officer should consider the following when developing the procedures:

(A)(*1*) Past performance on earlier orders under the contract, including quality, timeliness and cost control.

(*2*) Potential impact on other orders placed with the contractor.

(*3*) Minimum order requirements.

(B) Formal evaluation plans or scoring of quotes or offers are not required.

(C) Keep submission requirements to a minimum. Contracting officers may use streamlined procedures, including oral presentations. In addition, the contracting officer need not contact each of the multiple awardees under the contract before selecting an order awardee if the contracting officer has information available to ensure that each awardee is provided a fair opportunity to be considered for each order.

(2) *Exceptions to the fair opportunity process.* The only exceptions to the requirement to provide each awardee a fair opportunity to be considered for each order in excess of $2,500 are—

(i) The agency need for the supplies or services is of such urgency that providing such opportunity would result in unacceptable delays;

(ii) Only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized;

(iii) The order should be issued on a sole-source basis in the interest of economy and efficiency as a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order; or

(iv) It is necessary to place an order to satisfy a minimum guarantee.

(3) *Pricing orders.* If the contract did not establish the price for the supply or service, establish prices for each order using the policies and methods in subpart 15.4.

(4) *Decision documentation for orders.* Document in the contract file the rationale for placement and price of each order.

(5) *Task and Delivery Order Ombudsman.* The head of the agency must designate a task-order contract and delivery-order contract ombudsman. The ombudsman must review complaints from contractors and ensure they are afforded a fair opportunity to be considered, consistent with the procedures in the contract. The ombudsman must be a senior agency official who is independent of the contracting officer and may be the agency's competition advocate.

(c) *Limitation on ordering period for task-order contracts for advisory and assistance services.* (1) Except as

provided for in paragraphs (c)(2) and (3) of this section, the ordering period of a task-order contract for advisory and assistance services, including all options or modifications, normally may not exceed 5 years.

(2) The 5-year limitation does not apply when—

(i) A longer ordering period is specifically authorized by a statute; or

(ii) The contract is for an acquisition of supplies or services that includes the acquisition of advisory and assistance services and the contracting officer, or other official designated by the head of the agency, determines that the advisory and assistance services are incidental and not a significant component of the contract.

(3) The contracting officer may extend the contract on a sole-source basis only once for a period not to exceed 6 months if the contracting officer, or other official designated by the head of the agency, determines that—

(i) The award of a follow-on contract is delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and

(ii) The extension is necessary to ensure continuity of services, pending the award of the follow-on contract.

7. Amend section 16.506—

a. In paragraphs (a), (b), (c), (d)(1), and (e) by removing the words ''The contracting officer shall insert'' and adding, in their place, the word ''Insert'';

b. In paragraphs (d)(2), (d)(3), and (d)(4) by removing the words ''the contracting officer shall''; and

c. By revising paragraphs (d)(5), (f), and (g) to read as follows:

16.506 Solicitation provisions and contract clauses.

* * * * *

(d) * * *

(5) If the contract—

(i) Includes subsistence for Government use and resale in the same schedule and similar products may be acquired on a brand-name basis; and

(ii) Involves a partial small business set-aside, use the clause with its Alternate IV.

* * * * *

(f) Insert the provision at 52.216–27, Single or Multiple Awards, in solicitations for indefinite-quantity contracts that may result in multiple contract awards. Do not use this provision for advisory and assistance services contracts that exceed 3 years and $10 million. Modify the provision to specify the estimated number of awards.

(g) Insert the provision at 52.216–28, Multiple Awards for Advisory and Assistance Services, in solicitations for task-order contracts for advisory and assistance services that exceed 3 years and $10 million (including all options), unless a determination has been made under 16.504(c)(2)(i)(A). Modify the provision to specify the estimated number of awards.

PART 37—SERVICE CONTRACTING

37.201 Definitions.

8. Amend section 37.201 by revising the section heading to read as set forth above, and by removing the definition ''Advisory and assistance services''.

[FR Doc. 99–32476 Filed 12–14–99; 8:45 am]

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federal register

Wednesday
December 15, 1999

Part V

Department of the Treasury

Internal Revenue Service

Department of Labor

Pension and Welfare Benefits Administration

Department of Health and Human Services

Health Care Financing Administration

Signing of a Memorandum of Understanding Among the Department of the Treasury, the Department of Labor, and the Department of Health and Human Services; Notice

DEPARTMENT OF THE TREASURY

Internal Revenue Service

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Notice of Signing of a Memorandum of Understanding among the Department of the Treasury, the Department of Labor, and the Department of Health and Human Services

AGENCIES: The Internal Revenue Service, Department of the Treasury; the Pension and Welfare Benefits Administration, Department of Labor; Health Care Financing Administration, Department of Health and Human Services.

ACTION: Memorandum of Understanding Among the Department of the Treasury, the Department of Labor, and the Department of Health and Human Services.

SUMMARY: The Department of the Treasury, the Department of Labor, and the Department of Health and Human Services (the Departments) entered into a Memorandum of Understanding (MOU) effective April 21, 1999. The purpose of the MOU is to implement section 104 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191, which directs the Departments to enter into an interagency MOU to ensure that regulations, rulings, and interpretations relating to the changes made by Subtitle A of Title I and section 401 of Title IV of HIPAA over which two or more Secretaries have responsibility are administered so as to have the same effect at all times. Section 104 also requires the coordination of policies relating to enforcing the shared provisions in order to avoid duplication of enforcement efforts and to assign priorities in enforcement. The text of the MOU is set forth below.

FOR FURTHER INFORMATION CONTACT: Russ Weinheimer, Internal Revenue Service, Department of the Treasury, at (202) 622–4695; Mark Connor, Pension and Welfare Benefits Administration, Department of Labor, at (202) 219–7006; or David Mlawsky, Health Care Financing Administration, Department of Health and Human Services, at (410) 786–1565.

Dated: December 9, 1999.

Alan Tawshunsky,

Special Counsel to the Associate Chief Counsel, Employee Benefits and Exempt Organizations, Internal Revenue Service, Department of the Treasury.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, Department of Labor.

Gale P. Arden,

Acting Deputy Director, Private Health Insurance Group, Health Care Financing Administration, Department of Health and Human Services.

Memorandum of Understanding Among the U.S. Department of the Treasury, the U.S. Department of Labor, and the U.S. Department of Health and Human Services

Article I

Introduction and Purpose

The Health Insurance Portability and Accountability Act of 1996 (''HIPAA''), Pub. L. No. 104–191, was enacted on August 21, 1996. Titles I and IV of HIPAA amended the Internal Revenue Code, the Employee Retirement Income Security Act of 1974, and the Public Health Service Act to add provisions to improve access, portability and continuity of health insurance coverage in the group and individual health insurance markets.

Section 104 of HIPAA directs the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services to enter into an interagency memorandum of understanding. Section 104 requires that the memorandum of understanding ensure that regulations, rulings, and interpretations relating to the changes made by Subtitle A of Title I and section 401 of Title IV of HIPAA over which two or more Secretaries have responsibility (''shared provisions'') are administered so as to have the same effect at all times. Section 104 also requires the coordination of policies relating to enforcing the shared provisions in order to avoid duplication of enforcement efforts and to assign priorities in enforcement. This memorandum of understanding (MOU) is adopted pursuant to section 104 of HIPAA.

This MOU formally establishes an interagency agreement among the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services to ensure coordination in the manner and for the purposes set forth in section 104 of HIPAA. The Departments also intend to follow the process set forth in this MOU, to the extent appropriate, with regard to interpretations and enforcement of the provisions of the Newborns' and Mothers' Health Protection Act of 1996, the Mental Health Parity Act of 1996, and Subsequent Legislation. In addition, the Departments of Labor and HHS agree to follow the process set forth in this MOU, to the extent appropriate, with regard to interpretations and enforcement of the provisions of the Women's Health and Cancer Rights Act of 1998.

Article II

Authority

This MOU is entered pursuant to the authority set forth in section 104 of HIPAA, Pub. L. No. 104–191.

Article III

Definitions

''Agency'' refers to a component of a Department. For purposes of this MOU, this includes the Internal Revenue Service (IRS) within the Department of the Treasury, the Pension and Welfare Benefits Administration (PWBA) within the Department of Labor, and the Health Care Financing Administration (HCFA) within the Department of Health and Human Services.

''Code'' refers to the Internal Revenue Code of 1986.

''Committee'' refers to the Coordinating Committee described in Article V.

''Department'' refers to each of the Department of the Treasury, the Department of Labor, and the Department of Health and Human Services.

''Departments'' refers collectively to the Department of the Treasury, the Department of Labor, and the Department of Health and Human Services.

''ERISA'' refers to the Employee Retirement Income Security Act of 1974.

''HCFA'' refers to the Health Care Financing Administration.

''HHS'' refers to the Department of Health and Human Services.

''Interpretations'' refers to any written Agency or Departmental statement, guidance, ruling, pronouncement, or explanation regarding a statute described in Article I of this MOU that is not a Regulation. Interpretations include statements such as Revenue Rulings, Technical Bulletins/Releases, Advisory Opinions, and similar Agency or Departmental releases that are binding on the issuing Agency or Department. Interpretations also include policy guidance, such as information letters, bulletins and policy letters,

whether or not such guidance is binding on the issuing Agency or Department.

''IRS'' refers to the Internal Revenue Service.

''Labor'' and ''DOL'' refer to the Department of Labor.

''MHPA'' refers to the Mental Health Parity Act of 1996.

''NMHPA'' refers to the Newborns' and Mothers' Health Protection Act of 1996.

''PHS Act'' refers to the Public Health Service Act.

''PWBA'' refers to the Pension and Welfare Benefits Administration.

''Regulations'' refers to rules that are promulgated in accordance with the provisions of the Administrative Procedure Act applicable to substantive rules and that are published in the **Federal Register** and codified in the Code of Federal Regulations.

''Related Acts'' refers to MHPA and NMHPA.

''Subsequent Legislation'' refers to future federal legislative enactments concerning health care which result in two or more of the Departments having shared jurisdiction.

''Treasury'' refers to the Department of the Treasury.

''WHCRA'' refers to the Women's Health and Cancer Rights Act of 1998.

Article IV

Background

Subtitle A of Title I and section 401 of Title IV of HIPAA are intended to improve the availability of private health insurance by increasing portability, access and renewability in the group market. HIPAA establishes limits on the imposition of preexisting condition exclusions and generally prohibits group health plans and health insurance issuers from discriminating against individuals based on health status when determining eligibility to enroll in a group health plan or to obtain related insurance or in deciding the amount of premium to be charged to similarly situated individuals. Employers may not be denied continued access to multiemployer plans, or multiple employer welfare arrangements, except for certain reasons set forth in HIPAA.

HIPAA and Related Acts amended three federal statutes: the Code, administered by the Treasury through IRS; ERISA, administered by DOL through PWBA; and the PHS Act, administered by HHS through HCFA. Under the Code, as amended by HIPAA and Related Acts, the Treasury has authority over group health plans (including church plans) and their sponsors, and IRS enforces the requirements of HIPAA and Related Acts through the imposition of an excise tax. Under ERISA, as amended by HIPAA and Related Acts, DOL has increased authority over group health plans that are subject to Part 7 of subtitle B of Title I of ERISA. Health insurance issuers offering health insurance coverage in connection with such plans are also subject to Part 7. However, in accordance with the provisions of HIPAA, only participants and beneficiaries (and not DOL) may bring an enforcement action against health insurance issuers under Part 7.

Under the PHS Act, as amended by HIPAA and Related Acts, HCFA has authority over health insurance issuers and nonfederal governmental plans. If a State fails to substantially enforce Parts A and B of Title XXVII of the PHS Act, or requests that HCFA enforce the provisions or requirements, HCFA enforces the group and individual market requirements by imposing a civil monetary penalty on issuers that fail to comply with HIPAA's requirements in that State.

There are differences in some of the amendments that HIPAA and Related Acts made to the three statutes. In some instances, changes were made to only one of the federal statutes with no counterpart in the other two statutes. Section 104 of HIPAA requires the Secretaries of the Treasury, Labor and HHS to coordinate in the areas of parallel responsibility relating to the shared provisions of HIPAA.

Article V

Scope of Work

The Departments agree to assign representatives to work closely to ensure that all Interpretations, Regulations and enforcement strategies relating to shared provisions of Subtitle A of Title I and section 401 of Title IV of HIPAA and Related Acts will be developed and implemented in a coordinated manner. All such Interpretations, Regulations and enforcement strategies will be administered in a manner that promotes consistency in effect, that avoids duplication of enforcement efforts, and that reflects consideration of the appropriate priorities in enforcement.

In this regard, the Departments will continue to work together closely through regular joint meetings and frequent consultation, consistent with the process (*i.e.,* by mutual consent) that has been used in developing existing Regulations and Interpretations under HIPAA and Related Acts. Similarly, DOL and HHS will continue to work together closely through regular joint meetings and frequent consultation to develop Regulations and Interpretations under WHCRA.

In order to further effectuate this coordination, the Treasury, IRS, DOL, and HHS each will name a ''Department Designee'' to serve on a Coordinating Committee. The Committee's task will be to ensure the identification and coordination of policies involving areas of shared responsibility under HIPAA and Related Acts to maintain consistency in the application of these provisions that amend the Code, ERISA, and the PHS Act.

The Committee also will take steps to maximize the efficiency of Agency enforcement efforts, including developing the terms of further agreement(s), as necessary. The Committee members shall meet, quarterly, or at such times as they may agree, to review and discuss relevant pending Regulations and Interpretations to evaluate whether the position(s) set forth therein reflect a coordinated position. Committee meetings will be held at locations agreed to by the Committee members. Upon agreement of the Committee members, such meetings may be held by conference call. Each Department will assume the costs associated with the participation of its respective Committee members.

Timely and prompt consensus will be sought in the development and administration of all Interpretations affected by this MOU. Any Department Designee can bring any matter subject to the MOU before the Committee. The Department Designees serving on the Committee will attempt to reach consensus on issues within 45 days (except in unusual circumstances) after such issues have been formally presented (including a written summary) at a meeting of the Committee. If consensus on particular issues is reached by the members of the Committee, appropriate clearance will be initiated within each Department.

Article VI

Coordinated Enforcement Strategy

Generally, the Departments intend to continue the current informal arrangements that have developed for cooperation and collaboration in the handling of inquiries arising under HIPAA, MHPA, NMHPA, and WHCRA. In addition, pursuant to Section 104(2) of HIPAA and this MOU, the Committee, and any appropriate individuals designated by the Agencies or Departments, shall develop a coordinated enforcement strategy that avoids duplication of enforcement efforts and assigns priorities in

enforcement. The Agencies or Departments shall first designate, within six months of the execution of this MOU, individuals who are to work with the Committee in developing the enforcement strategy. This group shall also devise a written operational agreement for the sharing of information that is related to enforcement cases among the Departments. Moreover, the operational agreement may address procedures for the referral of cases, the development of audit checklists and training materials, and the coordination of public affairs information. The operational agreement may also describe the individuals within each Department who are responsible for implementing the sharing of information.

Subject to applicable legal restrictions (including section 6103 of the Code), the Departments agree, absent exigent circumstances, to notify each other in writing (through the Department Designee) prior to the commencement of any administrative or judicial proceeding on matters within the scope of this MOU and to inform each other of the final action resulting from such proceeding.

Nothing in this section shall be construed to affect the enforcement authority that HIPAA or Related Acts confers on any Department, including enforcement concerning a matter as to which a Department has given or received the information or notice described herein, nor shall this paragraph be construed to preclude the Departments from agreeing to different arrangements on a case by case basis.

Article VII

Confidentiality of Information

The Departments agree that any information shared or disclosed pursuant to this MOU will be held in strict confidence and may be used only for purposes consistent with this MOU or as otherwise permitted by law. All requests by parties other than the Departments for disclosure of information shall be coordinated with the Agency that initially compiled or collected the information, provided that no Agency shall disclose information initially compiled by another Agency to the public without the approval of the appropriate Agency or Department unless the Agency is required by law to do so (*e.g.,* Freedom of Information Act (FOIA), 5 U.S.C. 552; Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2), in which event it will notify the appropriate Department or Agency in writing of its intent to disclose such information. Nothing in this MOU shall be deemed to confer rights on any party other than the Departments as a result of any act or omission by any Agency or Department with respect to its obligations under this MOU.

Article VIII

Duration of Agreement

This MOU will become effective upon the date of the final signature and may be amended by written agreement of the undersigned. It will remain in effect until amended by the parties, or until terminated by any of the parties upon 30 days written notice to the other parties and, upon the agreement of the Departments, shall apply to Subsequent Legislation.

Article IX

Officials Responsible for MOU

The appropriate Departmental officials will appoint their respective Department Designees to the Committee within 30 days after the signing of this MOU and will appoint any successors in a timely manner.

We, the undersigned, do hereby agree to the foregoing provisions of this MOU.

Dated: April 8, 1999.

Donald C. Lubick,

Assistant Secretary for Tax Policy, Department of the Treasury.

We, the undersigned, do hereby agree to the foregoing provisions of this MOU.

Dated: April 21, 1999.

Robert E. Wenzel,

Deputy Commissioner, Internal Revenue Service, Department of the Treasury.

We, the undersigned, do hereby agree to the foregoing provisions of this MOU.

Dated: March 17, 1999.

Richard M. McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration, Department of Labor.

We, the undersigned, do hereby agree to the foregoing provisions of this MOU.

Dated: March 30, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration, Department of Health and Human Services.

[FR Doc. 99–32500 Filed 12–14–99; 8:45 am]

BILLING CODE 4830–01–P; 4510–29–P; 4120–01–P

federal register

Wednesday
December 15, 1999

Part VI

Department of Agriculture

Food Safety and Inspection Service

Department of Health and Human Services

Centers for Disease Control and Prevention
Food and Drug Administration

Environmental Protection Agency

President's Council on Food Safety; Notice of Meeting; Notice

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 98–045N]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Food and Drug Administration

[Docket No. 97N–0074]

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. OPP–00550B; FRL–6399–8]

President's Council on Food Safety; Notice of Meeting

AGENCY: Food Safety and Inspection Service, USDA; Centers for Disease Control and Prevention, HHS; Food and Drug Administration, HHS; Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The President's Council on Food Safety was established in August 1998 under Executive Order 13100 to strengthen and focus our efforts to coordinate food safety policy and resources. The Council was directed to develop a comprehensive Federal food safety strategic plan. The purpose of the strategic plan is to reduce acute and chronic foodborne and waterborne illness by further enhancing the safety of the nation's food supply. The United States Department of Agriculture (USDA), the Department of Health and Human Services (HHS), and the Environmental Protection Agency (EPA) are announcing a public meeting to discuss development of the strategic plan. USDA, the Food and Drug Administration (FDA), and EPA have established public dockets to receive comments about the Council's food safety strategic plan.

DATES: The meeting will be held on January 19, 2000, from 8:30 a.m. to 5:30 p.m. Comments should be submitted by February 14, 2000.

ADDRESSES: The meeting will be held at: The Washington Plaza Hotel, 10 Thomas Circle, Massachusetts Avenue and 14th St., Washington, DC. Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method provided in Unit I.C. of the SUPPLEMENTARY INFORMATION. To ensure proper receipt, it is imperative that you identify the appropriate docket control number on the first page of your comments.

FOR FURTHER INFORMATION CONTACT: To register for this meeting or for general information, call Ms. Ida Gambrell on (202) 501–7260. Persons requiring a sign language interpreter or other special accommodations should notify Ms. Gambrell by January 7, 2000.

For technical information about the meeting, call Mr. Robert Tynan, of USDA, on (202) 205–7393 or e-mail: robert.tynan@usda.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Public Meeting Announcement Apply to Me?

This announcement is directed to the general public. It may, however, be of particular interest to individuals or organizations concerned with public health and food safety. Specific groups that may want to attend include, but are not limited to: Consumers, food producers, processors, transporters, distributors, and retailers, food service providers, public health professionals, academia, and State, Tribal and local public health, food safety, agricultural and environmental agencies. Other entities or individuals may also be interested in attending. The agencies have not attempted to describe all the specific entities that may be interested in attending this public meeting. If you have any questions about the public meeting, please consult the technical person listed under ''FOR FURTHER INFORMATION CONTACT.''

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

1. *Electronically*. You may obtain electronic copies of this document and other related documents on the Internet at http://www.foodsafety.gov/. This website is a joint FDA, USDA, and EPA food safety homepage. It is linked to each agency for persons seeking additional food safety information. To access this document, select ''President's Council on Food Safety'' and under ''Public Meeting on January 19, 2000 in Washington, DC,'' select ''**Federal Register** Document''; this document will be the last entry under ''**Federal Register** Documents.'' You can also go directly to the **Federal Register** listing at http://www.epa.gov/fedrgstr/.

An expanded draft of the strategic plan, titled ''Preliminary Food Safety Strategic Plan for Public Review,'' will also be available prior to the public meeting. You may obtain this support document and other related documents from the Internet at http://www.foodsafety.gov/. To access the document, select ''President's Council on Food Safety.'' You can also go directly to the support document at http://www.epa.gov/opptsfrs/home/rules.htm#docket, and scroll down to the ''National Food Safety Initiative.'' The draft strategic plan will be available by January 7, 2000.

The public docket in its entirety is available on the Internet at: http://www.epa.gov/opptsfrs/home/rules.htm#docket.

2. *By mail*. You may also obtain a copy of this document and the related draft strategic plan document by calling Ms. Gambrell at (202) 501–7260.

C. How Can I Participate?

1. *In person*. Anyone interested in food safety is encouraged to attend the public meeting. To register for the public meeting, call Ms. Gambrell at (202) 501–7260. Although registration is encouraged, walk-ins will be accommodated to the extent space permits. Persons requiring a sign language interpreter or other special accommodations should notify Ms. Gambrell by January 7, 2000.

2. *In writing*. The agencies have established public dockets for the President's Council on Food Safety Strategic Plan. Comments should be submitted by February 14, 2000. It is important that comments submitted to the dockets are identified with the appropriate docket number. For those comments directed to USDA, use Docket No. 98–045N, and for comments directed to FDA, use Docket No. 97N–0074. Commenters are encouraged to submit a disk with their written comments in WordPerfect 6.1/8.0 or ASCII file format. Submit written comments (in triplicate) to:

USDA/FSIS

USDA/FSIS Hearing Clerk, 300 12th St., SW., Rm. 102 Cotton Annex, Washington, DC 20250-3700.

FDA

FDA/Dockets Management Branch (HFA-305), 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

3. Electronically. Comments may also be submitted electronically to: oppts.homepage@epa.gov. All comments and data in an electronic format must be identified by the docket number OPP–00550. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

II. Background Information

On August 25, 1998, the President issued Executive Order 13100 establishing the Council on Food Safety and charged it to develop a 5–year comprehensive Federal food safety strategic plan and to make

recommendations to the President on how to implement the plan. A coordinated food safety strategic plan is needed to address some of the difficult public health, resource, and management questions facing Federal food safety agencies. The strategic plan will address a broad range of issues (e.g., microbial, chemical contaminants, pesticides, food additives, and physical hazards) and actions necessary to ensure the safety of the food and water Americans use and consume. The charge is to develop a strategic long-range plan that can be used to help set priorities, improve coordination and efficiency, identify gaps in the current system and how to fill those gaps, enhance and strengthen prevention and intervention strategies, and identify measures to show progress.

To accomplish this task, the Council established an interagency Strategic Planning Task Force. In developing the plan, the Task Force is keeping in mind the conclusions and recommendations of the National Academy of Sciences (NAS) report on ''Ensuring Safe Food from Production to Consumption'' and the Council's report to the President on its ''Assessment of the NAS Report: Ensuring Safe Food from Production to Consumption'' published in March 1999. The Task Force is also considering the review of Federal food safety research developed under the auspices of the National Science and Technology Council titled ''Federal Food Safety Research: Current Programs and Future Priorities'' which was published in July 1999.

The food safety agencies took the first steps on the strategic plan by developing a draft vision statement and engaging consumers, producers, processors, food service providers, retailers, health professionals, State and local governments, Tribes, academia, and the public in the strategic planning process through a series of public meetings beginning in the fall of 1998. The purpose of those meetings was to obtain the public's view on a long-term vision for food safety in the U.S., to identify the important food safety challenges for the strategic plan, and to solicit public comment on the NAS report ''Ensuring Safe Food from Production to Consumption.'' As a result of those public meetings, the vision statement has been revised and is provided below in Unit III.

In June 1999, the Council published a set of five draft food safety goals and accompanying objectives as a framework for the food safety strategic plan. Comment on those draft goals and objectives as well as suggestions for additional specific action items was solicited at a public meeting on July 15, 1999, in Washington, DC, at stakeholder meetings that took place in conjunction with scientific or professional conferences in the last few months, and through written comments to the dockets.

Based on the many thoughtful and constructive comments received in writing and the excellent, active participation both at the July public meeting and at the meetings during scientific and professional conferences, major changes have been made to the framework and content of the strategic plan. The Council wants to engage all interested stakeholders in a further discussion about the draft goals, objectives, and action items for the U.S. food safety system as well as whether organizational or other changes would facilitate achievement of the goals.

III. Public Meeting and Request for Comment

A. Public Meeting Information

The public meeting is scheduled for January 19, 2000, from 8:30 a.m. to 5:30 p.m. at The Washington Plaza Hotel in Washington, DC. The purpose of the meeting is to obtain the public's input on the strategic plan goals, objectives, and example action items, and to solicit suggestions for additional action items to be included in the plan. The Task Force is also interested in comments on the priorities, ways to measure progress, and mechanisms for successful implementation of the plan.

The meeting is intended to be a working meeting. It will be divided into four parts, one dealing with the proposed strategic plan framework, and one on each of the plan's three goals. The sessions will be interactive and focused around the questions provided below. Participants will be invited to raise concerns, present points of view and ask questions; members of the Council's Strategic Planning Task Force will respond and share their opinions, as appropriate. While consensus may emerge on certain points, the purpose of the meeting is to provide the government with a range of input relevant to the development of the strategic plan. Participants are strongly encouraged to read both this document and the related support document ''Preliminary Food Safety Strategic Plan for Public Review'' (available as provided in Unit I.B.) prior to the meeting.

A transcript of the public meeting will be posted on the Internet at: www.foodsafety.gov/. The transcripts may also be requested in writing from the Dockets Management Branch (HFA-305), FDA, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, approximately 15 business days after the meeting at a cost of 10 cents per page. The transcript of the public meeting will also be available for public examination at the above-mentioned office between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding legal holidays.

B. Draft Food Safety Strategic Plan for Discussion

Although the United States has one of the safest food supplies in the world, recent estimates of foodborne illness and hazards indicate that opportunities for further improvement exist. Accordingly, the Council is developing a strategy to protect public health by significantly reducing the number of foodborne illnesses and hazards. Such a strategy would aim to establish priorities on the basis of risk and to create an integrated, seamless food safety system that speaks with one voice. To define and develop focused, risk-based actions to achieve the overarching goal, the Council has developed a plan with three broad and complementary goals: Science and Risk Assessment; Risk Management; and Risk Communication. For each goal, major objectives to be addressed, along with some specific action items, have been developed. As a part of this process, the Council is also examining whether organizational, statutory, or other changes to the Federal food safety system will facilitate achievement of public health and food safety goals.

While separated for presentation purposes within the draft plan, it is essential to recognize the interdependent nature of the goals, objectives, and actions. To assure a safe food supply and protect public health, microbiological, chemical, and other public health risks posed by food must be identified and characterized with confidence. Such risks also must be assessed, prioritized, and addressed through effective science-based risk management and communication strategies. In particular, accurate and timely information must be communicated to the public.

The following synopsis outlines the strategic plan vision statement, the draft overarching goal and three supporting sub-goals, provides a listing of certain objectives and illustrative action items, and provides an overview of the initial effort to examine potential organizational options. This synopsis is intended to provide examples of the types of objectives and actions that will be included in the strategic plan document, and to stimulate thinking

and public comment about the essential components of an effective food safety strategy. The public meeting and the documents provided are intended to focus the discussion on important food safety issues and their solutions. An expanded draft of the plan will be available in January for review prior to the public meeting (see Unit I.B.); participants in the public meeting and commenters are strongly encouraged to read both this document and the preliminary strategic plan before attending the public meeting or commenting.

Following the public review and comment process, the strategic plan will be refined. The final plan will include evaluation strategies to determine whether public health goals are met, and whether mid-course corrections to the plan are needed. Mechanisms for measuring progress and public health impact of the strategic plan will be developed in each goal area. The plan will also include an examination of whether organizational, statutory, or other changes can contribute to implementation of the plan and achievement of the goals.

1. *Vision, goals, objectives and action items.*

Vision Statement

Consumers can be confident that food is safe. We protect public health through a seamless food safety system that uses farm-to-table preventive strategies and integrates research, surveillance, inspection, enforcement, and education. We use science- and risk-based approaches and work with public and private partners. We are vigilant to new and emergent threats and consider the needs of vulnerable populations. Food is safe because everyone understands and fulfills their responsibilities.

Overarching Goal

To protect public health by significantly reducing the number of foodborne illnesses and hazards through science-based and coordinated regulation, inspection, enforcement, research, and education programs.

Sound Science and Risk Assessment Goal: The United States food safety system is based on sound science and risk assessment.

Draft objectives: The Sound Science and Risk Assessment Goal includes, but might not be limited to, the following objectives.

- Develop and implement a unified, risk-based problem-solving research agenda.
- Identify emerging and potential high-risk food safety threats.
- Strengthen the scientific basis for food safety policies and regulatory decisions through rigorous assessments of risk.
- Enhance scientific infrastructure and skills at Federal, state, and local levels.

Possible action items: Examples of action items to achieve the above objectives include the following.

- Use risk assessment techniques to identify priorities for the research agenda.
- Support the development of rapid tests for pathogenic microorganisms and chemical agents in food and clinical specimens.
- Establish a national network of scientific experts that can be mobilized when a new food safety concern is identified.
- Establish extramural Centers of Excellence to conduct targeted research and develop training programs linked to food safety and public health.

Risk Management Goal: The United States system for managing food safety is effective from farm-to-table.

Draft objectives: The Risk Management Goal includes, but might not be limited to, the following objectives.

- Establish national risk-based standards to control food safety risks.
- Develop and promote preventive techniques and controls based on national standards, and require implementation where appropriate.
- Use non-regulatory approaches for improving food safety.
- Detect food safety risks and violations of food safety standards through monitoring, inspections, and comprehensive surveys.
- Protect the food supply through consistent enforcement of food safety laws.
- Expand and enhance effective surveillance of illness and other health effects resulting from food safety hazards.
- Respond rapidly and effectively to food safety emergencies.
- Implement food safety activities effectively in partnership with state and local governments.
- Implement a strategy to ensure the safety of imported food.

Possible action items: Illustrative action items for the above Risk Management objectives are provided below.

- Develop and use incentive programs to improve food safety (e.g., preferential entry into Federal programs, such as the school lunch program).
- Upgrade the ability at all levels (Federal, state and local) to conduct public health surveillance, laboratory diagnostics, and emergency response.
- Expand capacity to monitor and inspect for pesticides and other chemical contaminants in food at critical points to decrease food safety risks.
- Improve and expand risk-based port-of-entry inspection that focuses on chemical, microbial, and physical hazards and labeling issues that promote public health.
- Identify state and local standards and regulations that should be applied within national standards.
- Strengthen surveillance of foodborne illness and hazards to prevent outbreaks.
- Expedite review for new technologies that decrease human pathogens that are present in food.
- Encourage development and expedite licensing of new technologies and safer pesticide products.
- Promote additional voluntary ''best practices'' and quality assurance programs to reduce risk of illness.
- Develop a network of animal diagnostic laboratories to enhance systematic monitoring in animal feeds and feedstuffs for microbial, chemical, and other hazards that pose a food safety risk.

Risk Communication Goal: The United States food safety system openly and effectively provides information on food safety risks, and education on how to control those risks.

Draft objectives: The Risk Communication Goal includes, but is not necessary limited to, the following objectives.

- Sustain public confidence through effective, open and timely information exchange regarding food safety risks and prevention strategies.
- Establish active outreach strategies to provide rapid public access to information about food safety emergencies.
- Develop and apply state-of-the-art science-based education and training programs for all along the farm-to-table chain, focused on actions to reduce foodborne illness and hazards.

Possible action items: Illustrative action items for the above Risk Communication objectives are provided below.

- Create a state-of-the-art national information network that links Federal food safety agencies (USDA, HHS, and EPA) with state and local public health, food safety, agricultural, and environmental agencies.
- Develop consistent and coordinated food safety messages and programs.
- Establish opportunities for public/private partnerships to promote effective communication about food safety risks.
- Launch a national public information/education campaign to widely disseminate food safety messages in multiple formats and languages.

2. *Strategic plan implementation.* As indicated in the President's Council on

Food Safety ''Assessment of the NAS Report: Ensuring Safe Food from Production to Consumption,'' the Council, as part of the strategic plan process, is conducting a thorough review of existing statutes to determine what can be accomplished with existing regulatory flexibility and what improvements will require statutory changes. The Council also is conducting an assessment of structural and organizational options and other mechanisms that could strengthen the Federal food safety system, keeping in mind that the primary goal is food safety and public health.

In this connection, the Strategic Planning Task Force is considering whether organizational or other changes would strengthen the current food safety system and facilitate the achievement of the public health and food safety goals of the strategic plan. Organizational changes under review include strengthening coordination and leadership; streamlining and/or consolidating specific Federal food safety functions; consolidating responsibilities and the structure of current agencies; and establishing a new, stand-alone consolidated food safety agency. Criteria for evaluating each of these options include the potential to improve public health and food safety, and to facilitate effectiveness, efficiency, comprehensiveness, public confidence, and the science-base for the food safety system. Options also will be assessed for their potential to contribute to achieving the overarching and three specific strategic plan goals.

For further information, the reader is encouraged to review the organizational analysis section in the support document which will be available as described in Unit I.B.

C. Questions/Issues for Discussion

The agencies are particularly interested in comments on the following issues related to the strategic plan. These questions will be the starting point for discussion at the public meeting sessions on the overall framework for the plan, and on the three goals.

General/Cross-cutting Question:

1. Is the overarching goal and overall framework of the plan well-focused and comprehensive? What modifications would you suggest? What issue or concern would your modification address?

Questions to be Posed for Each Goal:

1. What additional objectives or specific action steps would improve the plan? What issue or concern would these address?

2. What objectives and action items should be given priority? Why?

3. What is your expectation of success? How do we measure success of the plan?

4. Are there organizational, statutory, or other changes that you suggest we consider to achieve this goal? How would these changes promote public health and food safety? What barriers would need to be addressed?

List of Subjects

Environmental protection, Food safety.

Dated: December 8, 1999.

Catherine E. Woteki,

Under Secretary for Food Safety, United States Department of Agriculture.

Dated: December 8, 1999.

Jane E. Henney,

Commissioner of Food and Drugs, Department of Health and Human Services.

Dated: December 7, 1999.

Martha Katz,

Deputy Director for Policy and Legislation, Centers for Disease Control and Prevention, Department of Health and Human Services.

Dated: December 8, 1999.

Susan H. Wayland,

Deputy Assistant Administrator for Prevention, Pesticides and Toxic Substances, Environmental Protection Agency.

[FR Doc. 99–32522 Filed 12–14–99; 8:45 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 15/P.L. 106–145
Otay Mountain Wilderness Act of 1999 (Dec. 9, 1999; 113 Stat. 1711)

H.R. 658/P.L. 106–146
Thomas Cole National Historic Site Act (Dec. 9, 1999; 113 Stat. 1714)

H.R. 1104/P.L. 106–147
To authorize the Secretary of the Interior to transfer administrative jurisdiction over land within the boundaries of the Home of Franklin D. Roosevelt National Historic Site to the Archivist of the United States for the construction of a visitor center. (Dec. 9, 1999; 113 Stat. 1717)

H.R. 1528/P.L. 106–148
National Geologic Mapping Reauthorization Act of 1999 (Dec. 9, 1999; 113 Stat. 1719)

H.R. 1619/P.L. 106–149
Quinebaug and Shetucket Rivers Valley National Heritage Corridor Reauthorization Act of 1999 (Dec. 9, 1999; 113 Stat. 1726)

H.R. 1665/P.L. 106–150
To allow the National Park Service to acquire certain land for addition to the Wilderness Battlefield in Virginia, as previously authorized by law, by purchase or exchange as well as by donation. (Dec. 9, 1999; 113 Stat. 1730)

H.R. 1693/P.L. 106–151
To amend the Fair Labor Standards Act of 1938 to clarify the overtime exemption for employees engaged in fire protection activities. (Dec. 9, 1999; 113 Stat. 1731)

H.R. 1887/P.L. 106–152
To amend title 18, United States Code, to punish the depiction of animal cruelty. (Dec. 9, 1999; 113 Stat. 1732)

H.R. 1932/P.L. 106–153
Father Theodore M. Hesburgh Congressional Gold Medal Act (Dec. 9, 1999; 113 Stat. 1733)

H.R. 2140/P.L. 106–154
To improve protection and management of the Chattahoochee River National Recreation Area in the State of Georgia. (Dec. 9, 1999; 113 Stat. 1736)

H.R. 2401/P.L. 106–155
U.S. Holocaust Assets Commission Extension Act of 1999 (Dec. 9, 1999; 113 Stat. 1740)

H.R. 2632/P.L. 106–156
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H.R. 2737/P.L. 106–157
To authorize the Secretary of the Interior to convey to the State of Illinois certain Federal land associated with the Lewis and Clark National Historic Trail to be used as an historic and interpretive site along the trail. (Dec. 9, 1999; 113 Stat. 1743)

H.R. 3381/P.L. 106–158
Export Enhancement Act of 1999 (Dec. 9, 1999; 113 Stat. 1745)

H.R. 3419/P.L. 106–159
Motor Carrier Safety Improvement Act of 1999 (Dec. 9, 1999; 113 Stat. 1748)

H.R. 3456/P.L. 106–160
To amend statutory damages provisions of title 17, United States Code. (Dec. 9, 1999; 113 Stat. 1774)

H.J. Res. 46/P.L. 106–161
Conferring status as an honorary veteran of the United States Armed Forces on Zachary Fisher. (Dec. 9, 1999; 113 Stat. 1775)

S. 67/P.L. 106–162
To designate the headquarters building of the Department of Housing and Urban Development in Washington, District of Columbia, as the ''Robert C. Weaver Federal Building''. (Dec. 9, 1999; 113 Stat. 1777)

S. 438/P.L. 106–163
Chippewa Cree Tribe of The Rocky Boy's Reservation Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999 (Dec. 9, 1999; 113 Stat. 1778)

S. 548/P.L. 106–164
Fallen Timbers Battlefield and Fort Miamis National Historic Site Act of 1999 (Dec. 9, 1999; 113 Stat. 1792)

S. 791/P.L. 106–165
Women's Business Centers Sustainability Act of 1999 (Dec. 9, 1999; 113 Stat. 1795)

S. 1595/P.L. 106–166
To designate the United States courthouse at 401 West Washington Street in Phoenix, Arizona, as the ''Sandra Day O'Connor United States Courthouse''. (Dec. 9, 1999; 113 Stat. 1802)

S. 1866/P.L. 106–167
John H. Chafee Coastal Barrier Resources System Act (Dec. 9, 1999; 113 Stat. 1803)

S. 335/P.L. 106–168
To amend chapter 30 of title 39, United States Code, to provide for the nonmailability of certain deceptive matter relating to sweepstakes, skill contests, facsimile checks, administrative procedures, orders, and civil penalties relating to such matter, and for other purposes. (Dec. 12, 1999; 113 Stat. 1806)

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