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Tuesday
December 21, 1999

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

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1205

Privacy Act Regulations; Correction

AGENCY: Merit Systems Protection Board.

ACTION: Correction of Final Rule.

On September 21, 1999, final rules were published at 64 FR 51043, Privacy Act. In that document, 5 CFR 1205.12 contained two paragraphs (c). This document correctly codifies the paragraph designations in that section.

DATES: Effective date December 21, 1999.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

SUPPLEMENTARY INFORMATION: FR Doc. 99–24552 published in the **Federal Register** of Tuesday, September 21, 1999, revised 5 CFR part 1204. This document corrects § 1205.12 as follows:

PART 1205—PRIVACY ACT REGULATIONS

1. The authority citation for part 1205 continues as follows:

Authority: 5 U.S.C. 552a and 1204.

2. On page 51044, in § 1205.12, the second paragraph (c) is correctly designated as paragraph (d). Corrected designated paragraph (d) reads as follows:

§ 1205.12 Time limits and determinations.

* * * * *

(d) *Determinating officials.* The Clerk of the Board, a Regional Director, or a Chief Administrative Judge will make determinations on requests.

Dated: December 13, 1999.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 99–33080 Filed 12–20–99; 8:45 am]

BILLING CODE 7400–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 99–075–2]

Mexican Fruit Fly; Regulated Areas, Regulated Articles, and Treatments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mexican fruit fly regulations by adding a portion of San Diego and Riverside Counties, CA, to the list of areas regulated because of the Mexican fruit fly. This action is necessary on an emergency basis to prevent the spread of the Mexican fruit fly into noninfested areas of the United States. This action restricts the interstate movement of regulated articles from the regulated area. We are also amending the regulations to provide for the use of a new alternative chemical treatment for premises and for the use of a cold treatment for citrons, litchis, longans, persimmons, and white zapotes, which are all regulated articles. These new treatment options will minimize the effect of restrictions on the interstate movement of regulated articles from regulated areas. We are also removing kumquats from the list of regulated articles. We have determined that kumquats do not pose a risk of hosting the Mexican fruit fly.

DATES: This interim rule was effective December 14, 1999. We invite you to comment on this docket. We will consider all comments that we receive by February 22, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–075–2, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 99–075–2.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The Mexican fruit fly, *Anastrepha ludens* (Loew), is a destructive pest of citrus and many other types of fruit. The short life cycle of the Mexican fruit fly allows rapid development of serious outbreaks that can cause severe economic losses in commercial citrus-producing areas.

The Mexican fruit fly regulations (contained in 7 CFR 301.64 through 301.64–10 and referred to below as the regulations) were established to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. The regulations impose restrictions on the interstate movement of regulated articles from regulated areas.

Section 301.64–3 provides that the Deputy Administrator for Plant Protection and Quarantine (PPQ), Animal and Plant Health Inspection Service (APHIS), shall list as a regulated area each quarantined State, or each portion of a quarantined State, in which the Mexican fruit fly has been found by an inspector, in which the Deputy Administrator has reason to believe the Mexican fruit fly is present, or that the Deputy Administrator considers necessary to regulate because of its proximity to the Mexican fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Mexican fruit fly occurs.

Less than an entire quarantined State will be designated as a regulated area only if the Deputy Administrator determines that the State has adopted and is enforcing a quarantine or regulations that impose restrictions on the intrastate movement of regulated articles that are substantially the same

as those that are imposed with respect to the interstate movement of the articles and the designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of the Mexican fruit fly.

In an interim rule effective September 22, 1999, and published in the **Federal Register** on September 28, 1999 (64 FR 52211–52212, Docket No. 99–075–1), we designated an area in San Bernardino and Riverside Counties, CA, as a regulated area.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of PPQ reveal that a portion of San Diego and Riverside Counties, CA, is infested with the Mexican fruit fly. Specifically, since October 12, 1999, inspectors have detected Mexican fruit flies in the Fallbrook area of San Diego and Riverside Counties, CA.

Accordingly, to prevent the spread of the Mexican fruit fly to noninfested areas of the United States, we are amending the regulations in § 301.64–3(c) by designating an area in San Diego and Riverside Counties, CA, as a regulated area. The regulated area is described in the rule portion of this document.

There does not appear to be any reason to designate any other portion of the quarantined State of California as a regulated area. Officials of State agencies of California are conducting an intensive Mexican fruit fly eradication program in the regulated areas in California. Also, California has adopted and is enforcing regulations imposing restrictions on the intrastate movement of certain articles from the regulated areas that are substantially the same as those imposed with respect to the interstate movement of regulated articles.

The Mexican fruit fly is not known to occur in the continental United States outside of the regulated areas in California and Texas.

Treatments

Section 301.64–10 of the regulations lists treatments for regulated articles. Regulated articles treated in accordance with this section may be moved interstate from a regulated area to any destination. Section 301.64–10 contains treatments for specified fruits, treatments for soil within the dripline of plants producing specified fruits, and treatments for premises (fields, groves, or areas) that are within a quarantined area but outside the infested core area.

In accordance with § 301.64–10(c), premises that are located within the regulated area but outside the infested core area, and that produce regulated articles, must receive regular treatments with malathion bait spray. We are amending § 301.64–10(c) to include a new alternative chemical treatment for premises. The new chemical treatment is a spinosad bait spray. Without spinosad bait spray, the only treatment made available by the regulations for premises has been malathion bait spray. Spinosad bait spray must be applied by aircraft or ground equipment at a rate of 0.01 oz of a USDA-approved spinosad formulation and 48 oz of protein hydrolysate per acre. For ground applications, the mixture may be diluted with water to improve coverage.

We are also amending § 301.64–10 to add provisions for cold treatment of citrons, litchis, longans, persimmons, and white zapotes. In the PPQ Treatment Manual, which is incorporated by reference into the Code of Federal Regulations (CFR), we list a cold treatment that is effective for Mexican fruit fly for several commodities. We also want to allow a cold treatment that is not listed in the PPQ Treatment Manual. Therefore, we are adding a new paragraph (f) to § 301.64–10 to state that citrons, litchis, longans, persimmons, and white zapotes may be cold treated in accordance with the PPQ Treatment Manual and in accordance with a treatment schedule described in paragraph (f).

Regulated Articles

Section 301.64–2 of the regulations lists articles that are regulated for the Mexican fruit fly. Kumquats are on the list of regulated articles because kumquats are known hosts to some species of *Anastrepha.* After reviewing scientific data, APHIS has determined that kumquats are not a host to the Mexican fruit fly. Therefore, we are removing kumquats from the list of regulated articles. This action will relieve unnecessary restrictions on the movement of kumquats from regulated areas.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Mexican fruit fly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective less than 30 days after publication. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

Under the Plant Quarantine Act and the Federal Plant Pest Act (7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167), the Secretary of Agriculture is authorized to regulate the interstate movement of articles to prevent the spread of injurious plant pests in the United States.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set out below, regarding the effects of this interim rule on small entities. We do not currently have all the data necessary for a comprehensive analysis of the effects of this interim rule on small entities. Therefore, we are inviting comments concerning potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this interim rule.

This action amends the Mexican fruit fly regulations by adding a portion of San Diego and Riverside Counties, CA, to the list of areas regulated because of the Mexican fruit fly. This action is necessary on an emergency basis to prevent the spread of the Mexican fruit fly into noninfested areas of the United States. We are also amending the regulations to provide for the use of a new alternative chemical treatment for premises and for the use of a cold treatment for citrons, litchis, longans, persimmons, and white zapotes, which are regulated articles. This new treatment option will minimize the effect of restrictions on the interstate movement of regulated articles from regulated areas. We are also removing kumquats from the list of regulated articles. We have determined that kumquats do not pose a risk of hosting the Mexican fruit fly.

Newly Regulated Area

This rule restricts the interstate movement of regulated articles from a portion of San Diego and Riverside

Counties, CA. Within the regulated area there are approximately 2,000 growers operating on 11,400 acres (72 square miles), 38 packing houses, 50 fruit sellers, and 2 farmer's markets that may be affected by the regulations. Those entities that move regulated articles interstate will have to comply with the regulations concerning certification and treatment. There are various relatively low cost treatments available, which in most cases will allow interstate movement of regulated articles.

Spinosad Bait Spray

Currently, growers have an option to treat the premises that are within the quarantined area but outside the infested core area and that produce regulated articles with regular treatments of malathion bait spray. This rule provides for the additional treatment alternative of spinosad bait spray for these premises. Growers and nurseries in all regulated areas may be affected by this change. However, because the cost for applying spinosad bait spray is comparable to the cost for applying the currently available malathion bait spray, entities will be little affected.

Cold Treatment

This rule also adds provisions for cold treatment of persimmons, longans, litchis, citrons, and white zapotes to qualify them for interstate movement from the regulated areas. Previously, no treatment was listed in the regulations for these fruits. In the regulated area in 1998, approximately $860,000 worth of persimmons were grown on 286 acres. We do not have information on the number of growers or value of longans, litchi, citron, or white zapotes grown in the regulated area, but the numbers are likely to be very small.

Cold treatment may take place in a refrigerated container which can be leased for approximately $65 per day. Using the container for 26 days (20 days of treatment and 6 days of preparation) would cost $1,690. Assuming that there are 800 flats of persimmons in one of these refrigerated containers, the cold treatment would add $2.11 to the cost of each flat of persimmons. Cold treatment may also take place at an approved facility, which would likely be less costly. Additionally, cold storage for the preparation of persimmons for market is a common practice; therefore, the treatment may add little additional cost (measures such as closer monitoring of temperature or better sealing of the facility may be required). Cold treatment allows the fruit to be shipped interstate to markets outside the regulated area.

The alternative to this interim rule was to make no changes in the regulations. After consideration, we rejected this alternative because if no action was taken, the Mexican fruit fly would spread to noninfested areas of the continental United States.

This interim rule contains no information collection or recordkeeping requirements.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

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

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this interim rule. The assessment provides a basis for the conclusion that the methods employed to eradicate the Mexican fruit fly will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

§ 301.64–2 [Amended]

2. In § 301.64–2, paragraph (a), the regulated article ''Kumquat (*Fortunella japonica*)'' is removed.

3. In § 301.64–3, paragraph (c), the entry for California is amended by adding an entry for San Diego and Riverside Counties, in alphabetical order, to read as follows:

§ 301.64–3 Regulated areas.

* * * * *

(c) * * *

California

* * * * *

San Diego and Riverside Counties. That portion of San Diego and Riverside Counties in the Fallbrook area bounded by a line drawn as follows: Beginning at the intersection of Rainbow Glen Road and Interstate Highway 15; then southwest along Interstate Highway 15 to Old Highway 395; then west and south along Old Highway 395 to Canonita Drive; then west along Canonita Drive to Tecalote Drive; then south along Tecalote Drive to Puerta Del Mundo; then northwest along Puerta Del Mundo to Peony Drive; then west along Peony Drive to Citrus Lane; then south along Citrus Lane to Citrus Drive; then south along Citrus Drive to Wilt Road; then west along Wilt Road to Laketree Drive; then southwest along Laketree Drive to Gird Road; then south along Gird Road to Knottwood Way; then west along Knottwood Way to Genista Place; then south along Genista Place to Brushwood Lane; then west and south along Brushwood Lane to Staghorn Court; then southwest along an imaginary line to the intersection of Linda Vista Drive and Via Monserate; then west along Via Monserate to Ramona Drive; then south along Ramona Drive to Hillrise Road; then west along Hillrise Road to La Canada Road; then west along La Canada Road to South Mission

Road; then southwest along an imaginary line to the east end of Shady Hill Lane; then west along Shady Hill Lane to Gateview Drive; then southwest along Gateview Drive to Olive Hill Road; then north along Olive Hill Road to Morro Hills Road; then west along Morro Hills Road to Sleeping Indian Road; then west along Sleeping Indian Road to Conejo Road; then northwest along an imaginary line to the intersection of Fallbrook Road and Vandergrift Boulevard; then west along Vandergrift Boulevard to Camp De Luz Road; then north along Camp De Luz Road to the intersection of the boundary line for the Camp Pendleton Marine Corps Base and De Luz Road; then northeast along De Luz Road to Daily Road; then northeast along Daily Road to Lynda Road; then northeast along Lynda Road to Sandia Creek Drive; then east and south along Sandia Creek Drive to Rock Mountain Drive; then east along Rock Mountain Drive to the Riverside/San Diego County line; then southeast along an imaginary line to the intersection of Stage Coach Lane and the Riverside/San Diego County line; then east along the Riverside/San Diego County line to the second unnamed road (near gate); then south along the second unnamed road (near gate) to Rainbow Glen Road; then southeast along Rainbow Glen Road to the point of beginning.

* * * * *

4. Section 301.64–10 is amended as follows:

a. Paragraph (c) is revised to read as set forth below.

b. A new paragraph (f) is added to read as set forth below.

§ 301.64–10 Treatments.

* * * * *

(c) *Premises.* A field, grove, or area that is located within the quarantined area but outside the infested core area, and that produces regulated articles, must receive regular treatments with either malathion or spinosad bait spray. These treatments must take place at 6- to 10-day intervals, starting a sufficient time before harvest (but not less than 30 days before harvest) to allow for completion of egg and larvae development of the Mexican fruit fly. Determination of the time period must be based on the day degrees model for Mexican fruit fly. Once treatment has begun, it must continue through the harvest period. The malathion bait spray treatment must be applied by aircraft or ground equipment at a rate of 2.4 oz of technical grade malathion and 9.6 oz of protein hydrolysate per acre. The spinosad bait spray treatment must be applied by aircraft or ground equipment at a rate of 0.01 oz of a USDA-approved spinosad formulation and 48 oz of protein hydrolysate per acre. For ground applications, the mixture may be diluted with water to improve coverage.

* * * * *

(f) *Citrons, litchis, longans, persimmons, and white zapotes.* Cold treatment in accordance with the PPQ Treatment Manual (for full identification of this standard, see § 300.1 of this chapter, ''Materials incorporated by reference'') and in accordance with the following schedule:

Treatment	Exposure period
33 °F or below	18 days.
34 °F or below	20 days.
35 °F or below	22 days.

Done in Washington, DC, this 14th day of December 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–33059 Filed 12–20–99; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Potato Crop Insurance Certified Seed Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific provisions that amend the Potato Crop Insurance Certified Seed Endorsement. The intended effect of this action is to improve the insurance coverage to better meet the needs of the insured. The changes will be effective for the 2001 and subsequent crop years.

EFFECTIVE DATE: This rule is effective January 20, 2000.

FOR FURTHER INFORMATION CONTACT: Rob Coultis, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO, 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be exempt for the purposes of Executive Order No. 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information for this rule have been previously approved by the OMB under control number 0563–0053 through April 30, 2001. The amendments set forth in this rule do not revise the content or alter the frequency of reporting for any of the forms or information collections cleared under the above-referenced docket.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. 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.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR

part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicate regulations and improve those that remain in force.

Background

On Friday, July 30, 1999, FCIC published a notice of proposed rulemaking in the **Federal Register** at 64 FR 41336–41338 to amend the Common Crop Insurance Regulations (7 CFR part 457) by revising 7 CFR 457.145, Potato Crop Insurance Certified Seed Endorsement, effective for the 2000 and succeeding crop years.

Following publication of the proposed rule on July 30, 1999, the public was afforded 60 days to submit written comments and opinions. No comments were submitted.

FCIC has made the following changes to the provisions contained in the proposed rule:

1. Section 8—Corrected section reference numbers in loss calculation steps. References should have been to section 8 rather than section 9.

2. Section 9—Clarified that provisions did not extend the period for which insurance was available.

The notice of proposed rulemaking indicated the amendments would be effective for the 2000 crop year. However, after publication of the proposed rule, FCIC determined there was an insufficient amount of time to implement the changes for the 2000 crop year. Therefore, the amendments will be effective for the 2001 and subsequent crop years.

List of Subjects in 7 CFR Part 457

Crop insurance, certified seed potatoes.

Final Rule

For the reasons stated in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457, effective for the 2001 and succeeding crop years, as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(p)

2. Amend § 457.145 as follows:

a. Revise the introductory text;

b. Revise sections 5, 8 and 9 of the endorsement; and

c. Add new sections 10 and 11 to the endorsement to read as follows:

§ 457.145 Potato crop insurance—certified seed endorsement.

The potato Certified Seed Endorsement provisions for the 2001 and succeeding crop years are as follows:

* * * * *

5. Your certified seed production guarantee per-acre will be the per-acre production guarantee used to cover the same acreage under the terms of the Northern Potato Crop Provisions. However, unless a written agreement provides otherwise, if the total amount of insurable certified seed acreage you have for the current crop year is greater than 125 percent of your average number of acres entered into and passing certification in the potato certified seed program in the three previous calendar years, your certified seed production guarantee for each unit will be reduced as follows:

* * * * *

8. If, due to insurable causes occurring within the insurance period, the amount of certified seed you produce is less than your certified seed production guarantee, we will settle your claim by:

(a) Multiplying the insured acreage by its respective certified seed production guarantee;

(b) Multiplying each result in section 8(a) by the dollar amount per hundredweight contained in the Special Provisions for production covered under this endorsement;

(c) Totaling the results of section 8(b);

(d) Multiplying the number of hundredweight of production that qualify as certified seed and any amount of production lost due to uninsured causes, or that does not qualify as certified seed due to uninsured causes, by the dollar amount per hundredweight contained in the Special Provisions for production covered under this endorsement;

(e) Subtracting the result of section 8(d) from the result of section 8(c); and

(f) Multiplying the result of section 8(e) by your share.

9. You must notify us of any loss under this endorsement not later than 14 days after you receive notice from the state certification agency that any acreage or production has failed certification. Nothing herein extends the insurance period beyond the time period specified in section 8 of the Northern Potato Crop Provisions and section 11 of the Basic Provisions.

10. Acreage covered under the terms of this endorsement will have the same unit structure as provided under the Basic Provisions and the Northern Potato Crop Provisions. For example, if you have two optional units (00101 and 00102) under your Northern Potato Crop Insurance Policy and you elect this endorsement, you will also have two optional units (00201 and 00202) for certified seed coverage, provided that certified seed is grown in both units 00101 and 00102. Or, if you have two basic units (00100 and 00200) under your Northern Potato Crop Insurance Policy and you elect this endorsement, you will also have two basic units (00300 and 00400) for certified seed coverage, provided that certified seed is grown in both units 00100 and 00200. In the event certified seed acreage is not grown in the same optional or basic units as acreage covered under the Basic Provisions and the Northern Potato Crop Provisions, certified seed units will be established in accordance with the unit division provisions contained in the Basic Provisions and the Northern Potato Crop Provisions. For example, if a basic unit is divided into two optional units for potato acreage covered under the Basic Provisions and the Northern Potato Crop Provisions, but certified seed is grown in only one of those optional units, the certified seed acreage will be insured as one basic unit.

11. Any production that does not qualify as certified seed because of varietal mixing or your failure to follow the standard practices and procedures required for certification will be considered as lost due to uninsured causes.

Signed in Washington, D.C., on December 15, 1999.

Robert J. Prchal

Deputy Administrator, Insurance Services, Federal Crop Insurance Corporation.

[FR Doc. 99–32955 Filed 12–20–99; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 22

[Docket No. 99–19]

RIN 1557–AB74

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Regulation H; Docket No. 10–52]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 339

RIN 3064–AC24

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AB89

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 760

Loans in Areas Having Special Flood Hazards

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Farm Credit Administration (FCA); and National Credit Union Administration (NCUA) (collectively, the Agencies).

ACTION: Joint final rule.

SUMMARY: The Agencies jointly are making technical amendments to their regulations on loans in areas having special flood hazards. This action removes an outdated cross-reference to Federal Emergency Management Agency (FEMA) regulations that had contained the text of the Standard Flood Hazard Determination Form (Form). This action is intended to update and make accurate the Agencies' regulations regarding loans in areas having special flood hazards.

EFFECTIVE DATE: December 21, 1999.

FOR FURTHER INFORMATION CONTACT:

OCC: Carol Workman, Compliance Specialist, Community and Consumer Policy, (202) 874–4858; Margaret Hesse, Senior Attorney, Community and Consumer Law Division, (202) 874–5750; or Jacqueline L. Lussier, Senior Attorney, Legislative and Regulatory Activities Division, Office of Chief Counsel, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Board: Kathleen C. Ryan, Attorney, Division of Consumer & Community Affairs (202) 452–3667; Michael O'Rourke, Counsel, Legal Division, (202) 452–3288, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551.

FDIC: Ken Baebel, Senior Review Examiner, Division of Compliance and Consumer Affairs, (202) 942–3086; Mark Mellon, Counsel, Regulation and Legislation Section, Legal Division, (202) 942–3090; or Nancy Schucker Recchia, Counsel, Regulation and Legislation Section, Legal Division, (202) 898–8885, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

FCA: Tong-Ching Chang, Policy Analyst, Office of Policy and Analysis, (703) 883–4498; or Wendy R. Laguarda, Senior Counsel, Office of General Counsel, (703) 883–4020, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090. TDD (703) 883–4444.

NCUA: Kimberly Iverson, Program Officer, (703) 518–6375; or Chrisanthy J. Loizos, Staff Attorney, Division of Operations, Office of General Counsel, (703) 518–6540, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion of Final Rule

As required by federal law, FEMA established the Form for determining whether a building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area, whether flood insurance is required, and whether federal flood insurance is available. 42 U.S.C. 4104b. On July 6, 1995, FEMA published a final rule that included the text of the Form at 44 CFR part 65 (Appendix A). 60 FR 35276. The Agencies published a joint final rule on the same date requiring lending institutions supervised by the Agencies (regulated lenders) to use the Form. 60 FR 35286. On August 29, 1996, the Agencies published a joint final rule that revised their respective flood insurance regulations. 61 FR 45684. This joint final rule also required regulated lenders to use the Form. The Agencies' regulations cross-referenced 44 CFR part 65 (Appendix A).

On May 21, 1998, FEMA published a final rule that removed 44 CFR part 65 (Appendix A). 63 FR 27856. FEMA removed Appendix A to enhance its ability to incorporate changes to the Form outside of the rulemaking process, while continuing to provide full notice of the availability of the Form to the public and to affected parties. *Id.*

Because FEMA removed 44 CFR part 65 (Appendix A), it is necessary for the Agencies to make conforming changes to their regulations.[1] This joint final rule removes the cross-reference in the Agencies' respective flood insurance regulations to 44 CFR part 65 (Appendix A) and replaces it with a statement that the Form is available from FEMA. The Agencies are making substantively similar technical clarifying changes to their regulations.

Regulated lenders still must use the Form for determining whether a building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area, whether flood insurance is required, and whether federal flood insurance is available. Regulated lenders may obtain the Form from FEMA through the mail by writing to FEMA Distribution Facility, P.O. Box 2012, Jessup, MD 20794–2012; by telephone at (800) 480–2520; or from FEMA's Internet website at <http://www.fema.gov/library/sfldfrm.pdf>.

II. Notice and Comment

This joint final rule makes only technical amendments removing an outdated cross-reference to another agency's regulations and, in some instances, adding information on the Form's availability. It makes no substantive changes to the Agencies' regulations. The Agencies therefore for good cause find that notice and public comment are unnecessary under section 553(b)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(B)).

III. Effective Date

Subject to certain exceptions, 12 U.S.C. 4802(b)(1) provides that new regulations and amendments to regulations prescribed by a federal banking agency that impose additional reporting, disclosures, or other new requirements on an insured depository institution must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form. This joint final rule is not subject to this delayed effective date requirement because it imposes no new requirements. It simply makes technical amendments. The Form is available from FEMA and regulated lenders will not need any additional time to adjust

[1] The Office of Thrift Supervision published this change separately. See 64 FR 69183, 69185 (December 10, 1999).

their policies or practices in order to comply with this joint final rule.

The Agencies also find good cause to dispense with the 30-day delayed effective date requirement under section 553(d) of the APA (5 U.S.C. 553(d)). Section 553(d) of the APA provides, subject to certain exceptions, that publication of a final rule must be made not less than 30 days before its effective date (5 U.S.C. 553(d)). A rulemaking is excepted from this requirement where an agency finds good cause for an earlier effective date and publishes such finding with rule (5 U.S.C. 553(d)(3)). As noted previously this joint final rule makes only technical amendments to remove an outdated cross-reference to another agency's regulations and, in some instances, adds information on the Form's availability. It makes no substantive changes to the Agencies' regulations. Accordingly, the Agencies find good cause to dispense with the delayed effective date requirements and to make this joint final rule effective upon publication in the **Federal Register**.

IV. Paperwork Reduction Act

The Agencies have determined that this joint final rulemaking does not contain or modify a collection of information pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) does not apply to a rulemaking where a general notice of proposed rulemaking is not required. 5 U.S.C. 603 and 604. As noted previously, the Agencies have determined that it is not necessary to publish a notice of proposed rulemaking for this joint final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis are not applicable. Moreover, since this joint final rule imposes no new requirements and makes only technical amendments, this joint final rule will not have a significant economic impact on a substantial number of small entities.

VI. Small Business Regulatory Enforcement Fairness Act

The Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 801–808) provide generally for agencies to report final rules to Congress and the General Accounting Office (GAO) for review before the rules may take effect. The reporting requirement is triggered when a federal agency issues a final rule. The Agencies will submit the appropriate reports to Congress and the GAO as required by SBREFA.

The Office of Management and Budget has found that this joint final rule does not constitute a ''major rule'' as defined by SBREFA.

VII. Executive Order 12866

OCC: The OCC has determined that its portion of this joint final rule is not a significant regulatory action as defined in Executive Order 12866.

VIII. Unfunded Mandates Act of 1995

OCC: The Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, 109 Stat. 48 (UMA), applies only when an agency is required to issue a general notice of proposed rulemaking or a final rule for which the agency published a general notice of proposed rulemaking (2 U.S.C. 1532). As noted previously, the Agencies have determined, for good cause, that notice and comment is unnecessary. Accordingly, the UMA does not require a budgetary impact analysis.

Nevertheless, the OCC has determined that its portion of this joint final rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

IX. Executive Order 13132 Statement

OCC: The OCC has determined that its portion of this joint final rule does not constitute a policy that has federalism implications for purposes of Executive Order 13132.

NCUA: Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. NCUA's portion of this joint final rule will apply to all federally insured credit unions, but it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that its portion of this joint final rule does not constitute a policy that has federalism implications for purposes of the executive order.

X. Assessment of Impact of Federal Regulation on Families

The Agencies have determined that this joint final rule will not affect family well-being within the meaning of section 654 of the Treasury Department Appropriations Act, 1999, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681.

List of Subjects

12 CFR Part 22

Flood insurance, Mortgages, National banks, Reporting and recordkeeping requirements.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Flood insurance, Mortgages, Reporting and recordkeeping requirements.

12 CFR Part 339

Flood insurance, Reporting and recordkeeping requirements.

12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 760

Credit unions, Mortgages, Flood insurance, Reporting and recordkeeping requirements.

Office of the Comptroller of the Currency

12 CFR CHAPTER I

Authority and Issuance

For the reasons set forth in the joint preamble, the OCC amends part 22 of chapter I of title 12 of the Code of Federal Regulations as set forth below:

PART 22—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

1. The authority citation for part 22 continues to read as follows:

Authority: 12 U.S.C. 93a; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In § 22.6, paragraph (a) is revised to read as follows:

§ 22.6 Required use of standard flood hazard determination form.

(a) *Use of form.* A bank shall use the standard flood hazard determination form developed by the Director of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will

be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner. A bank may obtain the standard flood hazard determination form from FEMA, P.O. Box 2012, Jessup, MD 20794–2012.

* * * * *

Dated: December 9, 1999.

John D. Hawke, Jr.,

Comptroller of the Currency.

Federal Reserve System

12 CFR CHAPTER II

Authority and Issuance

For the reasons set forth in the joint preamble, the Board amends part 208 of chapter II of title 12 of the Code of Federal Regulations as set forth below:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: (12 U.S.C. 24, 36, 92(a), 93(a), 248(a), 248(c) 321–338a,371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909, 15 U.S.C. 78b, 781(b), 781(g), 781(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In § 208.25, paragraph (f)(1) is revised to read as follows:

§ 208.25 Loans in areas having special flood hazards.

* * * * *

(f) Required use of standard flood hazard determination form. (1) use of form. A member bank shall use the standard flood hazard determination form developed by the Director of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner. A member bank may obtain the standard flood hazard determination form by written request to FEMA, P.O. Box 2012, Jessup, MD 20794–2012.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 10, 1999.

Jennifer J. Johnson,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR CHAPTER III

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Directors of the FDIC amends part 339 of chapter III of title 12 of the Code of Federal Regulations as set forth below:

PART 339—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

1. The authority citation for part 339 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In § 339.6, paragraph (a) is revised to read as follows:

§ 339.6 Required use of standard flood hazard determination form.

(a) Use of form. A bank shall use the standard flood hazard determination form developed by the Director of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner. A non-member bank may obtain the standard flood hazard determination form by written request to FEMA, P.O. Box 2012, Jessup, MD 20794–2012.

* * * * *

By order of the Board of Directors.

Dated at Washington, DC, this 6th day of December 1999.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Executive Secretary.

Farm Credit Administration

12 CFR Chapter VI

Authority and Issuance

For the reasons stated in the joint preamble, the Board amends part 614 of chapter VI of title 12 of the Code of Federal Regulations as set forth below.

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.3A, 4.12, 4.12A, 4.13, 413B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5, 8.9 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2154a, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5, 2279aa–9); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

2. In § 614.4940, paragraph (a) is revised to read as follows:

§ 614.4940 Required use of standard flood hazard determination form.

(a) Use of form. System institutions must use the standard flood hazard determination form developed by the Director of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the 1968 Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner. A System institution may obtain the standard flood hazard determination form by written request to FEMA, P.O. Box 2012, Jessup, MD 20794–2012.

* * * * *

Dated: December 8, 1999.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

National Credit Union Administration

12 CFR CHAPTER VII

Authority and Issuance

For the reasons set forth in the joint preamble, the NCUA amends part 760 of chapter VII of title 12 of the Code of Federal Regulations as set forth below.

PART 760—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

1. The authority citation for part 760 continues to read as follows:

Authority: 12 U.S.C. 1757, 1789; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In § 760.6, paragraph (a) is revised to read as follows:

§ 760.6 Required use of standard flood hazard determination form.

(a) Use of form. A credit union shall use the standard flood hazard determination form developed by the Director when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used

in a printed, computerized, or electronic manner. A credit union may obtain the standard flood hazard determination form from FEMA, P.O. Box 2012, Jessup, MD 20794–2012.

* * * * *

By the National Credit Union Administration Board on November 30, 1999.

Becky Baker,

Secretary of the Board.

[FR Doc. 99–32687 Filed 12–20–99; 8:45 am]

BILLING CODE 4810–33–M; 6210–01–M; 6714–01–M; 6705–01–M; 7535–01–M

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 932, 934, 935

[No. 99–62]

RIN 3069–AA89

Devolution of Corporate Governance Responsibilities

AGENCY: Federal Housing Finance Board.

ACTION: Interim final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulations to devolve certain corporate governance responsibilities from the Finance Board to the Federal Home Loan Banks (Banks), pursuant to the requirements of the Federal Home Loan Bank System Modernization Act of 1999.

DATES: This interim final rule shall be effective on December 21, 1999. The Finance Board will accept written comments on the interim final rule on or before January 20, 2000.

ADDRESSES: Mail comments to: Elaine L. Baker, Secretary to the Board, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006. Comments will be available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: James L. Bothwell, Director, (202) 408–2821, or Scott L Smith, Deputy Director, (202) 408–2991, Office of Policy, Research and Analysis; or Sharon B. Like, Senior Attorney-Advisor, (202) 408–2930, or Eric M. Raudenbush, Senior Attorney-Advisor, (202) 408–2932, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Bank System and Finance Board Roles and Responsibilities

Under the Federal Home Loan Bank Act (Bank Act), the Finance Board is responsible for the supervision and regulation of the 12 Banks. *See* 12 U.S.C. 1422a(a)(3), 1422b(a)(1) (1994). Specifically, the Finance Board's primary duty is to ensure that the Banks operate in a financially safe and sound manner. Consistent with that primary duty, the Finance Board also is responsible for ensuring that the Banks carry out their housing finance and community lending mission, and that they remain adequately capitalized and able to raise funds in the capital markets. *See id.* 1422a(a)(3).

Historically, the Bank Act has required the Finance Board to be involved in varying degrees in the corporate governance of the Banks, typically by requiring Finance Board approval for a host of Bank practices. However, the recently enacted Federal Home Loan Bank System Modernization Act of 1999 (Modernization Act) [1] repealed most of those requirements, thereby removing most of the last vestiges of governance responsibilities from the Finance Board. *See* Pub. L. No. 106–102, 604(a)(6); 606(d), (f), (g) (1999). Accordingly, the Finance Board is amending its regulations to remove the corresponding Finance Board approval requirements for such corporate governance functions, consistent with the Modernization Act.

II. Analysis of Interim Final Rule

A. Part 932–Directors, Officers and Employees of the Banks

1. Amendment of Bank Directors' Meeting and Compensation and Expenses Regulations—§§ 932.16, 932.17

Section 7(i) of the Bank Act formerly permitted each Bank, with the approval of the Finance Board, to pay its directors reasonable compensation for the time required of them, and their necessary expenses, in the performance of their duties, in accordance with the resolutions adopted by such directors. *See* 12 U.S.C. 1427(i) (1994). Section 932.17 of the Finance Board's regulations permits each Bank, within certain standards of reasonableness set forth in the regulation, to implement its own policy on director compensation and allows each Bank to pay its directors for such expenses as are payable by the Bank to its senior officers. *See* 12 CFR 932.17 (1999). Payments made in compliance with the regulation are deemed to be approved by the Finance Board, as required by section 7(i).

The Modernization Act amended section 7(i) of the Bank Act by imposing specific limits on annual compensation for the Chairperson, Vice Chairperson and other members of the Bank's board of directors. *See* Modernization Act, 606(b). These statutory limits on annual directors' compensation are implemented by revised § 932.17(c)(1) of this interim final rule. Payments made in compliance with the limits and standards are deemed to be approved by the Finance Board for purposes of section 7(i).

The Finance Board understands that the new statutory limits generally would result in most directors receiving less compensation than that currently allowed pursuant to existing § 932.17. Nevertheless, that appears to be precisely what Congress intended. Moreover, based on the Finance Board's consultations with Congress, it is clear that Congress intended that no diminution in workload would result as a consequence of the reduced directors' compensation. Accordingly, for safety and soundness reasons, § 932.16 is revised to require that each Bank's board of directors continue to maintain its level of oversight of the management of the Bank. Consistent with this maintenance of effort standard, § 932.16 requires each Bank's board of directors to hold no fewer in-person meetings in any year than it has held on average over the immediately preceding three years, but a Bank may apply to the Finance Board for approval, upon a showing of good cause, to hold in any year fewer than the required number of in-person board meetings.

In addition, and consistent with Congressional intent, the Finance Board believes that directors should be compensated only for the performance of official Bank business and not simply for holding office. Accordingly, § 932.17 is revised to provide that, starting in 2000, a Bank may not pay fees to a director, such as retainer fees, that do not necessarily reflect actual performance by the director of official Bank business. Thus, a director who regularly fails to attend board or committee meetings may not be paid at all, and the Finance Board would consider such failure a dereliction of the director's fiduciary duties that would constitute cause for removal of the director, pursuant to section 2B(a)(2) of the Bank Act. *See* 12 U.S.C. 1422b(a)(2) (1994).

2. Removal of Selection and Compensation of Bank Officers and Employees Regulations—§§ 932.18 and 932.19

Section 12(a) of the Bank Act formerly made the selection and compensation of Bank officers and employees subject to Finance Board approval. *See* 12 U.S.C.

[1] The Modernization Act is Title VI of the Gramm-Leach-Bliley Act, Pub. L. No. 106–102, 113 Stat. 1338, enacted into law on November 12, 1999.

1432(a) (1994). Sections 932.18 and 932.19 of the Finance Board's regulations set forth requirements for the selection of Bank Presidents and other Bank officers and employees, and for the payment of compensation to Bank officers and employees. *See* 12 CFR 932.18, 932.19 (1999).

The Modernization Act amended section 12(a) of the Bank Act by removing the requirement for Finance Board approval in connection with the selection and compensation of Bank officers and employees. *See* Modernization Act, § 606(d)(1)(B). Accordingly, 932.18 and 932.19 of the Finance Board's regulations are removed.

B. Part 934—Operations of the Banks

1. Amendment of Bank Budgets Regulation—§ 934.7

The Bank Act does not provide explicitly for Finance Board approval of Bank budgets. However, pursuant to the Finance Board's supervisory responsibilities under the Bank Act, *see* 12 U.S.C. 1422a(a)(3), 1422b(a)(1) (1994), § 934.7 of the Finance Board's regulations establishes specific requirements for the Banks' preparation and reporting of budget and other financial information to the Finance Board. In addition, section 12(a) of the Bank Act formerly required prior Finance Board approval for a Bank to buy or erect a bank building to house the Bank, or to lease a bank building under a lease with a term of more than ten years. *See* 12 U.S.C. 1432(a) (1994). Section 934.7(a)(2) of the Finance Board's budget regulation implements this provision by providing that, pursuant to the requirement of section 12(a) of the Bank Act, a Bank must obtain prior approval of the Finance Board before purchasing or erecting, or leasing for a term of more than 10 years, a building to house the Bank. *See* 12 CFR 934.7(a)(2) (1999).

The Modernization Act amended section 12(a) of the Bank Act by removing the requirement for Finance Board approval of such Bank building transactions. See Modernization Act, 606(d)(1)(A). Accordingly, the requirement in paragraph (a)(2) for Finance Board approval of such transactions is removed from § 934.7. In addition, consistent with the devolution philosophy reflected in this interim final rule, the Finance Board has determined that the Banks should no longer be required to submit to the Finance Board the budget and other financial reports required by §§ 934.7(b) through (e). Accordingly, §§ 934.7(b) through (e) are removed.

2. Amendment of Bank Bylaws Regulation—§ 934.16

Section 12(a) of the Bank Act formerly provided that the Banks had the power, by their boards of directors, to prescribe, amend, and repeal bylaws governing the manner in which their affairs may be administered, subject to the approval of the Finance Board. *See* 12 U.S.C. 1432(a) (1994). Section 934.16 of the Finance Board's regulations allows the Banks to adopt, amend or repeal their bylaws without Finance Board approval, as long as the bylaws or amendments are consistent with applicable statutes, regulations and Finance Board policies. *See* 12 CFR 934.16 (1999).

The Modernization Act amended section 12(a) of the Bank Act by removing the requirement for Finance Board approval of Bank bylaws, provided that the bylaws are consistent with applicable laws and regulations, as administered by the Finance Board. *See* Modernization Act, § 606(d)(1)(C). The Finance Board believes that, as a matter of sound corporate governance practice, the Banks should have bylaws governing the manner in which the Banks' affairs are conducted. Accordingly, § 934.16 is revised to provide that a Bank's board of directors shall have in effect at all times bylaws governing the manner in which the Bank administers its affairs, and that such bylaws shall be consistent with applicable laws and regulations as administered by the Finance Board.

3. Amendment of Bank Dividends Regulation—§ 934.17

Section 16(a) of the Bank Act formerly provided generally that dividends may be paid by the Banks out of previously retained earnings or current net earnings only with the approval of the Finance Board. *See* 12 U.S.C. 1436(a) (1994). Section 6(g) of the Bank Act provides that all stock of any Bank shall share in dividend distributions without preference. *See* 12 U.S.C. 1426(g) (1994). Section 934.17 of the Finance Board's regulations implements these statutory provisions by providing generally that the board of directors of each Bank, with the approval of the Finance Board, may declare and pay a dividend from net earnings, including previously retained earnings, on the paid-in value of capital stock held during the dividend period. *See* 12 CFR 934.17 (1999). Section 934.17 also provides that dividends on such stock shall be computed without preference and only for the period such stock was outstanding during the dividend period. *See id.* In addition, dividend payments by the Banks have been subject to a Finance Board Dividend Policy, *see* Finance Board Res. No. 90–38 (Mar. 15, 1990), as well as Board of Directors Resolutions approving specific Bank dividend payments, that established specific conditions for approval of such dividend payments, including that the dividend payment would not result in a projected impairment of the par value of the capital stock of the Bank.

The Modernization Act amended section 16(a) of the Bank Act by removing the requirement for Finance Board approval of Bank dividend payments. *See* Modernization Act, section 606(g)(1)(B). In addition, under the Modernization Act, section 6(g) remains in effect during a transition period until the Finance Board has adopted capital regulations and approved the capital structure plans of the Banks, after which period section 6(g) is repealed. *See id.* section 608.

Because the payment of dividends no longer requires the approval of the Finance Board, the Finance Board believes the determination of the applicable dividend period for such payments also should be a discretionary decision of the Banks. Therefore, § 934.17 of the Finance Board's regulations is revised to eliminate references to the dividend period during which capital stock is held. However, the Finance Board believes that, for safety and soundness reasons, the capital stock impairment restriction currently imposed pursuant to the Dividend Policy should continue to apply. Accordingly, § 934.17 of the Finance Board's regulations is revised to provide that a Bank's board of directors may declare and pay a dividend only from previously retained earnings or current net earnings, and only if such payment will not result in a projected impairment of the par value of the capital stock of the Bank. Section 934.17 also provides that dividends on such capital stock shall be computed without preference.

Consistent with these regulatory amendments, the Finance Board intends to rescind by separate resolution its Dividend Policy as no longer necessary.

C. Part 950—Bank Advances

1. Removal of Requirement for Finance Board Approval of Bank Forms for Advances Applications, Advances Agreements and Security Agreements—§ 935.4(d)(2)

Section 9 of the Bank Act formerly required that applications from members for Bank advances must be ''in such form as shall be required by the [Bank] with the approval of the [Finance] Board.'' *See* 12 U.S.C. 1429

(1994). In addition, section 10(d) of the Bank Act formerly required that members enter into an obligation to repay the advance, ''in such form as shall meet the requirements of the [B]ank and the approval of the [Finance] Board.'' *See id.* section 1430(d). Section 935.4(d)(2) of the Finance Board's regulations provides that each Bank's forms for all advances applications, advances agreements and security agreements are deemed approved by the Finance Board if such forms are consistent with the requirements of part 935. *See* 12 CFR 935.4(d)(2) (1999). Section 935.4(d)(2) also requires each Bank to provide copies of its current forms for all advances agreements and security agreements, and any substantive revisions thereto, to the Finance Board. *See id.*

The Modernization Act amended section 9 of the Bank Act by removing the requirement for Finance Board approval of Bank advances application forms. *See* Modernization Act, section 606(f)(1)(A). In addition, the Modernization Act amended section 10(d) of the Bank Act by removing the requirement for Finance Board approval of Bank forms for the repayment of advances. *See id.* section 606(f)(2)(B)(i). Accordingly, a regulatory provision governing Finance Board approval of Bank forms for advances applications, advances agreements and security agreements is no longer necessary, and § 935.4(d)(2) is removed.

2. Removal of Requirement for Finance Board Approval of Bank Approvals of Conditional Advances—§ 935.5(a)(2)

Section 9 of the Bank Act formerly required that a Bank may, subject to the approval of the Finance Board, grant an application for advances on such conditions as the Bank may prescribe. *See* 12 U.S.C. 1429 (1994). Section 935.5(a)(2) of the Finance Board's regulations implements this provision by providing that a Bank, in its discretion, may approve a member's application for an advance subject to such additional terms as the Bank may prescribe, pursuant to the provisions of the Bank Act, part 935, and any policy guidelines of the Finance Board. *See* 12 CFR 935.5(a)(2) (1999).

The Modernization Act amended section 9 of the Bank Act by removing the requirement for Finance Board approval in connection with Bank conditional advances. *See* Modernization Act, section 606(f)(1)(B). Accordingly, a regulatory provision governing Finance Board approval of Bank conditional advances is no longer necessary, and § 935.5(a)(2) is removed.

3. Removal of Requirement for Finance Board Approval of Bank Transfers of Advances and Advance Participations—§ 935.16

Section 10(d) of the Bank Act formerly required that: ''[s]ubject to the approval of the [Finance] Board, any [Bank] shall have power to sell to any other [Bank], with or without recourse, any advance made under the provisions of this chapter, or to allow to such [Bank] a participation therein, and any other [Bank] shall have power to purchase such advance or to accept a participation therein, together with an appropriate assignment of security therefor.'' *See* 12 U.S.C. 1430(d) (1994). Section 935.16 of the Finance Board's regulations allows the Banks to purchase and sell advance participations without the approval of the Finance Board, subject to the approval of the boards of directors of the relevant Banks. *See* 12 CFR 935.16 (1999). The Finance Board currently approves proposed Bank transfers of whole advances pursuant to Chairman's Orders that set forth certain conditions for the approval. The Finance Board recently proposed amending § 935.16 to allow the Banks to approve the transfer of whole advances, in addition to advance participations, without Finance Board approval, subject to the transfers meeting certain conditions derived in part from the Chairman's Orders. *See* 64 FR 44444 (Aug. 16, 1999).

The Modernization Act amended section 10(d) of the Bank Act by removing the requirement for Finance Board approval in connection with transfers of Bank advances and advance participations. *See* Modernization Act, section 606(f)(2)(B)(ii). Accordingly, a regulatory provision governing transfers of Bank advances and advance participations is no longer necessary, and § 935.16 is removed. The Finance Board by separate action has withdrawn its proposed transfer of advances regulation, *see* Docket # 99–63 (Dec. 14, 1999).

III. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this interim final rule, the provisions of the Regulatory Flexibility Act, 5 U.S.C. section 601 *et seq.*, do not apply. Moreover, the interim final rule applies only to the Banks, which do not come within the meaning of ''small entities,'' as defined in the Regulatory Flexibility Act. *See id.* section 601(6).

IV. Paperwork Reduction Act

This interim final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

V. Notice and Public Participation

The Finance Board for good cause finds that the notice and public comment procedure required by the Administrative Procedure Act is impracticable, unnecessary or contrary to the public interest in this instance, because the changes made by this interim final rule implement recently enacted statutory amendments that rendered obsolete certain provisions of the Finance Board's regulations. *See* 5 U.S.C. 553(b)(3)(B).

List of Subjects in 12 CFR Parts 932, 934, and 935

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

Accordingly, the Finance Board hereby amends title 12, chapter IX, parts 932, 934, and 935, Code of Federal Regulations, as follows:

PART 932–DIRECTORS, OFFICERS, AND EMPLOYEES OF THE BANKS

1. The authority citation for part 932 is revised to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1427, and 1432.

2. Revise § 932.16 to read as follows:

§ 932.16 Site and frequency of board of directors and committee meetings.

(a) *Site.* Meetings of a Bank's board of directors and committees thereof usually should be held within the district served by the Bank. No meetings of a Bank's board of directors and committees thereof may be held in any location that is not within the United States, including its possessions and territories.

(b) *Maintenance of effort.* (1) Notwithstanding the limits on annual directors' compensation established by section 7(i) of the Act, as amended, the board of directors of each Bank shall continue to maintain its level of oversight of the management of the Bank, and, except as provided in paragraph (b)(2), the board of directors shall hold no fewer in-person meetings in any year than it has held on average over the immediately preceding three years.

(2) A Bank may apply to the Finance Board for approval, upon a showing of good cause, to hold in any year fewer than the number of in-person board of

directors meetings required under paragraph (b)(1).

3. Amend § 932.17 by:

a. Revising paragraphs (a) through (c); and

b. Adding paragraph (f), to read as follows:

§ 932.17 Compensation and expenses of Bank directors.

(a) *Definition.* As used in this section, compensation means any payment of money or provision of any other thing of value (or the accrual of a right to receive money or a thing of value in a subsequent year) in consideration of a director's performance of official duties for the Bank, including, without limitation, daily meeting fees, incentive payments and fringe benefits.

(b) *Annual compensation policy.* Beginning in 2000 and annually thereafter, each Bank's board of directors shall adopt by resolution a written policy to provide for the payment to Bank directors of reasonable compensation for the performance of their duties as members of the Bank's board of directors, subject to the requirements set forth in paragraph (c) of this section. At a minimum, such policy shall address the activities or functions for which attendance is necessary and appropriate and may be compensated, and shall explain and justify the methodology for determining the amount of compensation to be paid to directors.

(c) *Policy requirements.* Payment to directors under each Bank's policy on director compensation may be based upon factors that the Bank determines to be appropriate, but each Bank's policy shall conform to the following requirements:

(1) *Statutory limits on annual compensation.* Pursuant to section 7(i) of the Act, as amended, for 2000, the following limits on compensation shall apply: for a Chairperson—$25,000; for a Vice Chairperson—$20,000; for any other member of the Bank's board of directors—$15,000. Beginning in 2001 and for subsequent years, these limits on annual compensation shall be adjusted annually by the Finance Board to reflect any percentage increase in the preceding year's Consumer Price Index (CPI) for all urban consumers, as published by the Department of Labor. Each year, as soon as practicable after the publication of the previous year's CPI, the Finance Board shall publish notice by **Federal Register**, distribution of a memorandum, or otherwise, of the CPI-adjusted limits on annual compensation.

(2) *Compensation permitted only for performance of official Bank business.* The total compensation received by each director in a year shall reflect the amount of time spent on official Bank business, such that greater or lesser attendance at board and committee meetings during a given year will be reflected in the compensation received by the director for that year. A Bank shall not pay fees to a director, such as retainer fees, that do not reflect the director's performance of official Bank business.

* * * * *

(f) *Approval.* Payments made to directors in compliance with the limits on annual directors' compensation and the standards set forth in this section are deemed to be approved by the Finance Board for purposes of section 7(i) of the Act, as amended.

4. Remove §§ 932.18 and 932.19, and reserve subpart C.

PART 934–OPERATIONS OF THE BANKS

5. The authority citation for part 934 continues to read as follows:

Authority: 12 U.S.C. 1422a, 1422b, 1431(g), 1432(a), and 1442.

6. Amend § 934.7 by:

a. Removing the words ''and reporting requirements'' from the heading;

b. Removing paragraphs (a)(2), (b), (c), (d) and (e); and

c. Redesignating paragraphs (a)(1), (3), (4) and (5) as paragraphs (a), (b), (c) and (d), respectively.

7. Revise § 934.16 to read as follows:

§ 934.16 Bank bylaws.

A Bank's board of directors shall have in effect at all times bylaws governing the manner in which the Bank administers its affairs, and such bylaws shall be consistent with applicable laws and regulations as administered by the Finance Board.

8. Revise § 934.17 to read as follows:

§ 934.17 Bank dividends.

A Bank's board of directors may declare and pay a dividend only from previously retained earnings or current net earnings, and only if such payment will not result in a projected impairment of the par value of the capital stock of the Bank. Dividends on such capital stock shall be computed without preference.

PART 935—ADVANCES

9. The authority citation for part 935 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1426, 1429, 1430, 1430b and 1431.

§ 935.4 [Amended]

10. Amend § 935.4 by:

a. Removing paragraph designation (d)(1); and

b. Removing paragraph (d)(2).

§ 935.5 [Amended]

11. Amend § 935.5 by:

a. Removing paragraph (a)(2); and

b. Redesignating paragraph (a)(3) as paragraph (a)(2).

§ 935.16 [Removed]

12. Remove § 935.16.

Dated: December 14, 1999.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 99–33069 Filed 12–20–99; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–194–AD; Amendment 39–11467; AD 99–26–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A310 and A300–600 series airplanes, that requires replacement of the rudder trim switch in the flight compartment with a new switch having a longer shaft; modification of wiring in panel 408VU; and replacement of the rudder trim control knob with an improved new knob. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent inadvertent and uncommanded rudder trim activation, which could result in yaw and roll excursions and consequent reduced controllability of the airplane.

DATES: Effective January 25, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 25, 2000.

ADDRESSES: The service information referenced in this AD may be obtained

from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A310 and A300–600 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on February 12, 1998 (63 FR 7076). That action proposed to require replacement of the rudder trim switch in the flight compartment with a new switch having a longer shaft; modification of wiring in panel 408VU; and replacement of the rudder trim control knob with an improved new knob.

Comments

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

Conclusion

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

Cost Impact

The FAA estimates that 90 airplanes of U.S. registry will be affected by this AD.

Replacement of the rudder trim switch and modification of the wiring will take approximately 7 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of this action on U.S. operators is estimated to be $37,800, or $420 per airplane.

Replacement of the rudder trim control knob will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of this action on U.S. operators is estimated to be $5,400, or $60 per airplane.

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

Regulatory Impact

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–26–08 AIRBUS INDUSTRIE: Amendment 39–11467. Docket 96–NM–194–AD.

Applicability: Model A310 and A300–600 series airplanes, certificated in any category; except those on which Airbus Modification 11874 [reference Airbus Service Bulletin A310–27–2087 (for Model A300 series airplanes) or A300–27–6042 (for Model A300–600 series airplanes), both dated October 2, 1998] has been accomplished.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent and uncommanded rudder trim activation, which could result in yaw and roll excursions and consequent reduced controllability of the airplane, accomplish the following:

Corrective Actions

(a) Within 90 days after the effective date of this AD, replace the rudder trim switch, part number (P/N) 097–023–00, in the flight compartment, with a new switch, P/N 097–023–01; and modify the wiring in panel 408VU; in accordance with Airbus Service Bulletin A310–27–2084, Revision 01 (for Model A310 series airplanes); or A300–27–6037, Revision 01 (for Model A300–600 series airplanes), both dated September 29, 1998; as applicable.

Note 2: Accomplishment of the actions required by paragraph (a) of this AD in accordance with Airbus Service Bulletin A310–27–2084 (for Model A310 series airplanes); or A300–27–6037 (for Model A300–600 series airplanes), both dated February 12, 1997; as applicable, is acceptable for compliance with that paragraph.

(b) Within 10 months after the effective date of this AD, replace the rudder trim control knob on the rudder trim switch with an improved new knob in accordance with Airbus Service Bulletin A310–27–2087, Revision 01 (for Model A310 series airplanes); or A300–27–6042, Revision 01 (for Model A300–600 series airplanes), both dated February 17, 1999; as applicable.

Note 3: Accomplishment of the actions required by paragraph (b) of this AD in accordance with Airbus Service Bulletin A310–27–2087 (for Model A310 series airplanes); or A300–27–6042 (for Model

A300–600 series airplanes), both dated October 2, 1998; as applicable, is acceptable for compliance with that paragraph.

Spares

(c) As of the effective date of this AD, no person shall install in the flight compartment of any airplane a rudder trim switch having P/N 097–023–00.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

Incorporation by Reference

(f) The actions shall be done in accordance with Airbus Service Bulletin A310–27–2084, Revision 01, dated September 29, 1998; Airbus Service Bulletin A300–27–6037, Revision 01, dated September 29, 1998; Airbus Service Bulletin A310–27–2087, Revision 01, dated February 17, 1999; or Airbus Service Bulletin A300–27–6042, Revision 01, dated February 17, 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in French airworthiness directives 97–111–219(B), dated May 7, 1997, and 1999–012–275(B), dated January 13, 1999.

(g) This amendment becomes effective on January 25, 2000.

Issued in Renton, Washington, on December 9, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–32508 Filed 12–20–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–32–AD; Amendment 39–11465; AD 99–26–06]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–200 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Pratt & Whitney JT8D–200 series turbofan engines, that requires initial and repetitive fluorescent magnetic particle inspections or fluorescent penetrant inspections of the combustion chamber outer case (CCOC) for cracks, and, if necessary, replacement with serviceable parts. Also, this AD requires a one-time boss material verification, and, if necessary, replacement with serviceable parts. Finally, this AD requires replacement of CCOCs with welded-on bosses with improved, one-piece CCOCs. Installation of the one-piece CCOC constitutes terminating action to the inspection requirements of this AD. This amendment is prompted by a report of an uncontained engine failure caused by fatigue cracks originating at the weld joining the drain boss to the CCOC. The actions specified by this AD are intended to prevent CCOC cracks, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective February 22, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 22, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770, fax (860) 565-4503. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and –219 series turbofan engines was published in the **Federal Register** on September 23, 1999 (64 FR 51483). That action proposed to require initial and repetitive fluorescent magnetic particle inspections or fluorescent penetrant inspections of the combustion chamber outer case (CCOC) for cracks, and, if necessary, replacement with serviceable parts. Also, that AD proposed to require a one-time boss material verification, and, if necessary, replacement with serviceable parts. Finally, that AD proposed to require replacement of CCOCs with welded-on bosses with improved, one-piece CCOCs. Installation of the one-piece CCOC would constitute terminating action to the inspection requirements of the AD. That action was prompted by a report of an uncontained engine failure caused by fatigue cracks originating at the weld joining the drain boss to the CCOC. That condition, if not corrected, could result in CCOC cracks, which could result in an uncontained engine failure and damage to the airplane.

Comments Received

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

Understated Financial Impact

One commenter states that the Federal Aviation Administration (FAA) has understated the financial impact of the AD by not including the ancillary costs of removing a cracked CCOC. The FAA does not concur. The indirect costs associated with this AD are not directly related to this rule, and, therefore, are not addressed in the economic analysis for this rule. A full cost analysis for each AD, including such indirect costs, is not necessary since the FAA has already performed a cost benefit analysis when adopting the airworthiness requirements to which these engines were originally certificated. A finding that an AD is warranted means that the original design no longer achieves the level of safety specified by those airworthiness requirements, and that other required actions are necessary, such as inspections of existing CCOCs and replacement with a one-piece CCOC. Because the original level of safety was

already determined to be cost beneficial, these additional requirements needed to return the engine to that level of safety do not add any additional regulatory burden, and, therefore, a full cost analysis would be redundant and unnecessary.

SB Publication Date vs. Effective Date of This AD

The same commenter expresses confusion as to how to compute the compliance intervals of this AD; specifically, if the effective date of the AD should be used vs. the publication date of the SB for a compliance baseline. The FAA concurs. For the purpose of this AD, all baseline compliance times should be calculated based upon the effective date of this AD. The FAA has added an explanatory paragraph (c) to this final rule to explicitly address this issue.

On-Wing Rejection of CCOC and Replacement of CCOC

The same commenter states that there is no clear direction as to the time interval between an on-wing rejection and the subsequent removal of the CCOC. The FAA concurs. After an on-wing rejection, the CCOC must be removed prior to further flight. The FAA has added explicit phrasing to each inspection paragraph of this final rule to indicate that there is no operating interval between an on-wing rejection and the subsequent removal of the CCOC.

Concurrence

One commenter supports the rule as proposed.

New Revision to Service Bulletin (SB)

Since publication of the NPRM, PW has issued Revision 2 to SB No. 6291, dated August 27, 1999. The original version of PW SB No. 6291, dated May 20, 1997, Revision 1, dated July 9, 1997, or Revision 2, dated August 27,1999, are all acceptable for performing the terminating action of installing a one-piece machined CCOC assembly, part number (P/N) 815556, as stated in paragraph (d) of this final rule.

Conclusion

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

Economic Analysis

There are approximately 2,624 engines of the affected design in the worldwide fleet. The FAA estimates that 1,280 engines installed on aircraft of U.S. registry will be affected by this proposed AD, that it will take approximately 2.5 work hours per engine to accomplish the proposed inspections and that the average labor rate is $60 per work hour. Required parts will cost approximately $42,320 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $54,361,600.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order (E.O.) 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–26–06 Pratt & Whitney: Amendment 39–11465. Docket 99–NE-32–AD.

Applicability: Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and –219 series turbofan engines with combustion chamber outer case (CCOC), part numbers (P/Ns) 5000238–01, 797707, 807684, and 815830 installed. These engines are installed on but not limited to McDonnell Douglas MD–80 series airplanes.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent CCOC cracks, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

Inspections

(a) Perform initial and repetitive fluorescent magnetic particle inspections (FMPI) or fluorescent penetrant inspections (FPI) of drain bosses and Ps4 bosses of the CCOC for cracks, and, if necessary, replace with serviceable parts prior to further flight, in accordance with the procedures and intervals specified in paragraph 1.A. of the Accomplishment Instructions of PW Alert Service Bulletin (ASB) No. A6359, Revision 1, dated July 30, 1999.

(b) For CCOCs listed by serial number (S/N) in Table 3 of PW ASB No. A6359, Revision 1, dated July 30, 1999, inspect for proper Ps4 and drain boss material, and, if necessary, replace with serviceable parts prior to further flight, in accordance with the procedures and intervals specified in paragraph 1.B. of the Accomplishment Instructions of PW ASB No. A6359, Revision 1, dated July 30, 1999.

Effective Date for Computing Compliance Intervals

(c) For the purpose of this AD, use the effective date of this AD for computing compliance intervals whenever PW ASB No. A6359, Revision 1, dated July 30, 1999, refers to the publication date of the ASB.

Terminating Action

(d) At the next part accessibility after the effective date of this AD when the CCOC has accumulated cycles-in-service greater than the initial inspection threshold specified in

table 1 of PW ASB A6359, Revision 1, dated July 30, 1999, replace the CCOC with a one-piece machined CCOC assembly, part number (P/N) 815556, in accordance with PW Service Bulletin (SB) No. 6291, dated May 20, 1997, or Revision 1 dated July 9, 1997, or Revision 2, dated August 27,1999. Installation of an improved, one-piece CCOC, P/N 815556, constitutes terminating action to the inspections required by this AD.

Definition

(e) For the purpose of this AD, part accessibility is defined as an engine disassembly in which the CCOC is removed from the engine.

Alternative Methods of Compliance

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

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

Incorporation by Reference

(h) The actions required by this AD shall be done in accordance with PW ASB No. A6359, Revision 1, dated July 30, 1999, and PW SB No. 6291, dated May 20, 1997, Revision 1, dated July 9, 1997, and Revision 2, dated August 27,1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770, fax (860) 565–4503. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the **Federal Register**, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) This amendment becomes effective on February 22, 2000.

Issued in Burlington, Massachusetts, on December 8, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–32506 Filed 12–20–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–248–AD; Amendment 39–11475; AD 99–26–15]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 B2 and B4 series airplanes, that requires repetitive inspections to detect cracking of the inner skin panel of the longitudinal lap joint; and repair, or modification and new repetitive inspections, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct stress corrosion cracking of the inner skin panel of the longitudinal lap joint, which could result in rapid depressurization of the airplane.

DATES: Effective January 25, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 25, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300 B2 and B4 series airplanes was published in the **Federal Register** on October 21, 1999 (64 FR 56712). That action proposed to require repetitive inspections to detect cracking of the inner skin panel of the longitudinal lap joint; and repair, or modification and new repetitive inspections, if necessary.

Comments

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

Conclusion

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

Cost Impact

The FAA estimates that 3 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required eddy current inspection (either internal or external), and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $720, or $240 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–26–15 AIRBUS: Amendment 39–11475. Docket 98–NM–248–AD.

Applicability: Model A300 B2 and B4 series airplanes, manufacturer serial numbers 003 through 156 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct stress corrosion cracking of the inner skin panel of the longitudinal lap joint, which could result in rapid depressurization of the airplane, accomplish the following:

Initial Inspection

(a) Within 400 flight cycles after the effective date of this AD, perform an external eddy current inspection for cracking of the inner skin panel of the longitudinal lap joint between frames 65 and 72 at stringer 57, in accordance with Airbus Service Bulletin A300–53–305, Revision 1, dated January 29, 1999.

Repetitive Inspections

(b) If no cracking is detected during the inspection performed in accordance with paragraph (a) of this AD: Thereafter, perform an internal or external eddy current inspection, as specified in paragraphs (b)(1) and (b)(2) of this AD, as applicable; at intervals not to exceed 1,250 flight cycles or 7 months, whichever occurs first; in accordance with Airbus Service Bulletin A300–53–305, Revision 1, dated January 29, 1999; until the requirements of paragraph (e) of this AD have been accomplished.

(1) If the most recent inspection was an internal eddy current inspection, perform an external eddy current inspection of the inner skin panel of the longitudinal lap joint.

(2) If the most recent inspection was an external eddy current inspection, perform an internal eddy current inspection of the inner skin panel of the longitudinal lap joint.

Corrective Actions

(c) If any cracking is detected during any inspection performed in accordance with paragraph (a) or (b) of this AD, prior to further flight, accomplish the actions required by either paragraph (c)(1) or paragraph (c)(2) of this AD.

(1) Repair the inner skin panel of the longitudinal lap joint in accordance with Airbus Service Bulletin A300–53–305, Revision 1, dated January 29, 1999. Thereafter, repeat the inspection of areas in which no cracking is detected at the interval specified in, and in accordance with, paragraph (b) of this AD; and repeat the inspection of the repaired area at the intervals specified in the service bulletin, in accordance with the service bulletin. If any cracking is found in the repaired area during any repetitive inspection, prior to further flight, repair in accordance with the service bulletin.

Note 2: Airbus Service Bulletin A300–53–305, Revision 1, dated January 29, 1999, references Airbus Structural Repair Manual Chapter 53–17–00, as an additional source of service information to accomplish the repair specified in paragraph (c)(1) of this AD.

(2) Modify the inner skin panel of the longitudinal lap joint in accordance with Airbus Service Bulletin A300–53–306, dated September 5, 1995, and accomplish the requirements of paragraph (d) of this AD.

(d) For airplanes modified in accordance with Airbus Service Bulletin A300–53–306, dated September 5, 1995: Inspect the modified inner skin panel of the longitudinal lap joint to detect cracking at the applicable threshold and repetitive intervals specified in Table 1A, 1B, or 2 of Airbus Service Bulletin A300–53–211, Revision 5, dated April 29, 1999, in accordance with Airbus Service Bulletin A300–53–211, Revision 5. If any cracking is found during any repetitive inspection, prior to further flight, repair in accordance with Airbus Service Bulletin A300–53–211, Revision 5.

Optional Modification

(e) Modification of the inner skin panel of the longitudinal lap joint in accordance with Airbus Service Bulletin A300–53–306, dated September 5, 1995, constitutes terminating action for the repetitive inspections required by paragraph (b) of this AD. Such modification does not terminate the repetitive inspections required by paragraph (d) of this AD.

Alternative Methods of Compliance

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

Note 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

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

Incorporation by Reference

(h) The actions shall be done in accordance with Airbus Service Bulletin A300–53–306, dated September 5, 1995; Airbus Service Bulletin A300–53–211, Revision 5, dated April 29, 1999; and Airbus Service Bulletin A300–53–305, Revision 1, dated January 29, 1999, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–6, 8–12 ..	1	Jan. 29, 1999.
7	Original	Sept. 5, 1995.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 98–150–246(B), dated April 8, 1998.

(i) This amendment becomes effective on January 25, 2000.

Issued in Renton, Washington, on December 13, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–32736 Filed 12–20–99; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 0

Miscellaneous Rules

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission Rules of Practice are being amended to reflect a reconfiguration of the Commission's Regional Office structure and operations.

EFFECTIVE DATE: December 21, 1999.

ADDRESSES: Requests for copies of the **Federal Register** notice should be sent to the Consumer Response Center, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The notice announcing the changes is available on the Internet at the Commission's website, ''http://www.ftc.gov''.

FOR FURTHER INFORMATION CONTACT: Donald S. Clark, Secretary, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, telephone number (202) 326–2514, E-mail ''dclark@ftc.gov''.

SUPPLEMENTARY INFORMATION: In July 1999 the Commission implemented a plan to reconfigure its Regional Office structure and operations. In particular, the Commission reduced the number of regions from ten to seven; closed the Boston and Denver Regional Offices, effective July 10, 1999; and changed the names and geographic areas of responsibility of the remaining Regional Offices.

List of Subjects in 16 CFR Part 0

Organization and functions (Government agencies).

For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, Chapter I, of the Code of Federal Regulations as follows:

PART 0—ORGANIZATION

1. The authority for Part 0 continues to read as follows:

Authority: Sec. 6(g), 38 Stat. 721 (15 U.S.C. 46); 80 Stat. 383 as amended (5 U.S.C. 552).

2. Section 0.19(b) is revised to read as follows:

§ 0.19 The Regional Offices.

* * * * *

(b) The names, geographic areas of responsibility, and addresses of the respective regional offices are as follows:

(1) *Northeast Region* (located in New York City, New York), covering Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont, and Puerto Rico. Federal Trade Commission, One Bowling Green, Suite 318, New York, New York 10004.

(2) *Southeast Region* (located in Atlanta, Georgia), covering Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, and Tennessee. Federal Trade Commission, Suite 5M35, Midrise Building, 60 Forsyth Street, SW., Atlanta, Georgia 30303.

(3) *East Central Region* (located in Cleveland, Ohio), covering Delaware, District of Columbia, Maryland, Michigan, Ohio, Pennsylvania, Virginia, and West Virginia. Federal Trade Commission, Eaton Center, Suite 200, 1111 Superior Avenue, Cleveland, Ohio 44114.

(4) *Midwest Region* (located in Chicago, Illinois), covering Illinois, Indiana, Iowa, Kansas, Kentucky, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin. Federal Trade Commission, 55 East Monroe Street, Suite 1860, Chicago, Illinois 60603–5701.

(5) *Southwest Region* (located in Dallas, Texas), covering Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. Federal Trade Commission, 1999 Bryan Street, Suite 2150, Dallas, Texas 75201.

(6) *Northwest Region* (located in Seattle, Washington), covering Alaska, Idaho, Montana, Oregon, Washington, and Wyoming. Federal Trade Commission, 915 Second Avenue, Suite 2896, Seattle, Washington 98174.

(7) *Western Region* (located in San Francisco and Los Angeles, California), covering Arizona, California, Colorado, Hawaii, Nevada, and Utah.

(i) San Francisco Office: Federal Trade Commission, 901 Market Street, Suite 570, San Francisco, California 94103.

(ii) Los Angeles Office: Federal Trade Commission, 10877 Wilshire Boulevard, Suite 700, Los Angeles, California 90024.

* * * * *

Donald S. Clark,

Secretary.

[FR Doc. 99–33014 Filed 12–20–99; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 130, 480, 620, 630, 635, 645, 710, 712, and 713

[FHWA Docket No. FHWA–98–4315]

RIN 2125–AE44

Right-of-Way Program Administration

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This document amends the right-of-way regulations for federally assisted transportation programs administered under title 23, United States Code. The FHWA clarifies and reduces Federal regulatory requirements and places primary responsibility for a number of approval actions at the State level. Conforming revisions are made to several regulatory parts to remove outdated, redundant, and unnecessary content. Also, the regulations are arranged to follow the same sequence as the development and implementation of a Federal-aid project to assist the public and State transportation departments (STDs) in locating regulations applicable to a specific point of interest.

DATES: This final rule is effective January 20, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. James E. Ware, (202) 366–2019, Office of Real Estate Services, HEPR–20, or Mr. Reid Alsop, Office of the Chief Counsel, HCC–31, (202) 366–1371. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded by using a computer modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: http://www.nara.gov/fedreg and the Government Printing Office's webpage at: http://www.access.gpo.gov/nara.

Background

The FHWA began the process of revising its regulations with an advance notice of proposed rulemaking (ANPRM) published on November 6, 1995 (60 FR 56004). As a first step in the comprehensive revision of the regulations, the FHWA removed obsolete and redundant parts by publishing an interim final rule on April 25, 1996, at 61 FR 18246. This action removed from title 23, CFR, all of parts 720 and 740, and portions of parts 710 and 712. Comments received in response to the ANPRM also identified the need for a comprehensive rewrite of the existing real estate program regulations.

An NPRM, published at 63 FR 71238, on December 24, 1998, proposed to revise the regulations and arrange them to follow the same sequence as the development and implementation of a Federal-aid project and thereby assist the public and State transportation departments in locating regulations applicable to a specific point of interest. The NPRM also proposed to clarify the State-Federal partnership.

The FHWA provides funds to the States and other organizations to reimburse them for the costs they have incurred in constructing highways and other transportation related projects. Regulations dealing with reimbursement and management of right-of-way (ROW) are contained in 23 CFR parts 710 through 713.

Discussion of Comments

ANPRM of November 6, 1995

Twenty comments were received: 2 from individuals, 2 from private groups or organizations, and 16 from STDs.

Based on the responses received, the FHWA concluded that the (ROW) regulations needed a comprehensive revision. During an initial review, the FHWA identified several parts of the regulations that were no longer needed.

NPRM of December 24, 1998

Twenty-eight comments were received in response to the December 24, 1998, NPRM. Comments were received from 25 States, one non-profit organization, a law firm representing five States, one individual, and a subcommittee of a right-of-way organization. The FHWA gratefully acknowledges the effort required to provide comprehensive comments, endorsements, and recommendations relating to the regulation.

Most commenters strongly supported the need to reorganize the regulations. A couple of comments noted that the regulations should not be reorganized and that reorganization could mean additional work for some States which had provided cross references by section number to the FHWA regulations. It was concluded that the advantages of completing a comprehensive rewrite of regulations which are nearly 25 years old outweighed the time and expense of changing cross references. Since the new regulations provide significant revisions, the text of State right-of-way manuals would require some revision in any event.

The NPRM proposed that Federal funds be allowed to participate in all costs necessitated by State law. Most commenters stated that they welcomed the reduction in Federal involvement in State matters and that since State laws varied widely, it made sense to reimburse based on actual State expenditures. Some commenters believed that allowing Federal reimbursement of costs not previously permitted would encourage State legislatures and courts to expand both property damage payments and costs of acquisition, such as, payments of property owners legal fees, court costs, and perhaps loss of business costs. In developing the final rule, the FHWA concluded that neither the FHWA nor STDs may have sufficient resources to monitor a wide variety of State laws and court decisions and that an across-the-board reimbursement of State expenditures required by State law is the most practical and equitable solution.

As the comment of the Vermont STD correctly noted, business loss can partially overlap ''damages'' and there is great difficulty trying to isolate and separate items in which the FHWA could not previously participate versus items where participation was permitted. Court awards most often do not clearly separate the various elements of damages making it difficult to isolate historically ''noncompensable'' damages.

Several comments were received suggesting that specific wording should be revised to more closely mirror language used by individual States. In completing the final rule, the FHWA selected language which it believes is best understood and utilized by the majority of the States. Nuances in language can be accommodated in the State procedural manual.

Several comments were received that questioned the procedures for receiving either credit or reimbursement for early acquisitions. These comments typically reflected that the reader believed that the FHWA was too restrictive, and that there should be no impediment to States moving forward to acquire right-of-way and receive reimbursement or credit at a subsequent date. There were also comments that FHWA should advance Federal funds for use in corridor preservation.

At the present time the FHWA believes that TEA–21 offers a great deal of flexibility in considering early acquisition in selected situations. The FHWA was aware of the statutory requirements which must be met in order to obtain either credit or reimbursement at a later date, as well as, lawsuits which have challenged early acquisition approaches and has adopted an approach which it considers prudent, and cautious, while fully implementing the intent of TEA–21. As additional experience is gained in the application of the TEA–21 principles, the FHWA will update the web page for ''Questions and Answers'' which will be developed continually to facilitate implementation of early acquisition concepts.

A limited number of comments were received questioning the FHWA's determination under the Unfunded Mandates Reform Act that the proposed regulation would result in estimated annual costs of less than $100 million. The regulation as developed should result in a reduction of costs to State, local, or tribal governments since they will not have to maintain staff to conduct surveillance to identify claims for elements of property damage that are not eligible for Federal reimbursement under the old regulation. The reduction in Federal approval actions should also result in cost savings by eliminating the time requirements for such approval.

The final rule also permits reimbursement to States for property acquisition costs and administrative costs which are not now reimbursed, so it is a benefit to those States.

A comment was received questioning the need for a reversionary clause when property is transferred at no cost by an STD to be used for public purposes under title 23, U.S.C. The FHWA concluded that where property to be used for public purposes is transferred at no cost, good stewardship and recognition of the public trust dictates that the property be placed in the use for which the disposal was approved. The reversionary clause is the most effective method to assure that use.

One comment was received concerning the need to insure that FHWA approval is required for the disposal of property at nominal or no costs in exceptional circumstances. Several comments were received suggesting that no FHWA approval for any disposal should be mandated. The requirement for FHWA approval is based on the requirements of 23 U.S.C. 156(b) and remains in the final rule. The rule's intent is that disposals for less than fair market value are to be the exception, rather than the rule. Language has been added encouraging that the criteria for disposals at less than fair market value be clearly stated in the STD manuals.

It is our intent to maintain current program guidance and information in an electronic format with ''Questions and Answers'' and policy interpretations. Technical air space guidance will also be maintained in this manner. The URL for up-to-date guidance is: *http://www.fhwa.dot.gov/realestate/index.htm.* This final rule seeks to further clarify and reduce Federal regulatory

requirements and to place primary responsibility for a number of approval actions at the State level. The adoption of these regulatory changes impacts other parts of 23 CFR, and in developing the final rule, attention has been given to conforming revisions as necessary. Such other parts include: 23 CFR part 130, Subpart D, Advance right-of-way revolving funds; 23 CFR part 480, Use and disposition of property previously acquired by States for withdrawn Interstate segments; 23 CFR part 620, Subpart B, Relinquishment of highway facilities; 23 CFR part 630; 23 CFR part 635; and 23 CFR part 645.

This final rule substantially revises the order of regulatory materials and completes the process of removing redundant, outdated, and unnecessary content from the existing rule. A unified purpose and applicability statement along with definitions is included in part 710, subpart A of this final rule. This consolidates material now found in several locations of the existing regulations.

The following table highlights the reordering of the content and intended revisions and redesignations for each subpart of the existing regulation:

Old part, subpart or section	New part, subpart or section
Part 130, subpart D	Removed.
Part 480	Removed.
620.202	620.202 [Revised].
620.203(j)	620.203(j) [Revised].
630.106(c)(3)	630.106(c)(3) [Revised].
635.307(b)(3)	635.307(b)(3) [Revised].
645.103(c), 645.111(c) and (d), and 645.113(i)	645.103(c), 645,111(c) and (d), and 645.113(i) [Revised].
710, subpart A [Reserved]	710, subpart A [Added].
710, subpart B (§§ 710.201–710.205)	710.201.
710, subpart C (710.301–710.306)	710.203.
712, subpart A [Reserved]	Removed.
712, subpart B (712.201–712.204)	710, subpart C.
712, subpart C [Reserved]	Removed.
712, subpart D (712.401–712.408)	710.105, 710.203.
712, subpart F (712.601–712.606)	710.509.
712, subpart G (712.701–712.703)	Removed.
713, subpart A (713.101–713.103)	710.101–710.103.
713, subpart B (713.201–713.205)	710.405.
713, subpart C (713.301–713.308)	710.407–710.409.

Part and Section Analysis

Part 130, Subpart D—Advance Right-of-Way Revolving Funds

Part 130, subpart D is removed from title 23, CFR, because section 1211 (e) of the TEA–21 eliminated the right-of-way revolving fund.

Part 480—Use and Disposition of Property Previously Acquired by States for Withdrawn Interstate Segments

Part 480 is removed from title 23, CFR, since section 1303 of the TEA–21 now allows States to retain the proceeds for the lease or sale of real estate on Federal projects as long as the proceeds are used for title 23, U.S.C., type projects. Other provisions of part 480 are obsolete.

Part 620, Subpart B—Relinquishment of Highway Facilities

Part 620 is amended to clarify that it is applicable only to transfers of highway facilities for continued highway use. Approvals for other disposals and modifications of access are governed by 23 CFR part 710.

Section 630.106(c)(3)

In § 630.106(c)(3), the reference to ''23 CFR part 712'' is revised to read ''23 CFR part 710'' to provide a current reference.

Section 635.307(b)(3)

In § 635.307(b)(3), the reference to ''23 CFR 713, subpart A'' is revised to read ''23 CFR 710.403'' to provide a current citation.

Part 645—Utilities

Sections 645.103(c) and 645.111 (c) and (d) are amended to revise the reference ''23 CFR chapter I, subchapter H, Right-of-Way and Environment'' to read ''23 CFR 710.203.'' Section 645.113(i) is amended to revise the reference ''23 CFR part 712, the Acquisition Functions'' to read ''23 CFR 710.503.''

Parts 710—Right-of-Way—General; 712—The Acquisition Function; and 713—Right-of-Way—The Property Management Function

Parts 710, 712, and 713 are removed in their entirety, and replaced by six new subparts under a new part 710. The reorganization includes: subpart A—General; subpart B—Program Administration; subpart C—Project Development; subpart D—Real Property Management; subpart E—Property Acquisition Alternatives; and subpart F—Federal Assistance Programs. These new sections clarify the purpose of the regulation and include a new definition section. Detailed requirements and rules have been replaced by a provision that will allow States to include their acquisition process in a State manual to be approved by the FHWA.

This final rule seeks to further clarify and reduce Federal regulatory requirements and to place primary responsibility for a number of approval actions at the State level. It substantially revises the order of regulatory materials and completes the process of removing redundant, outdated, and unnecessary content from the existing rule.

Part 710, Subpart A—General

A unified purpose and applicability statement along with definitions is included in subpart A of this final rule. This consolidates material now found in several locations of the existing regulations.

Part 710, Subpart B—Program Administration

Section 710.201 clarifies that the STD has the overall responsibility to assure compliance with State and Federal laws and regulations. The methods and practices of the STDs are to be specified in ROW operations manuals submitted for approval by the FHWA no later than January 1, 2001, and certified as current every five years thereafter.

State ROW manuals are considered to be a sound basis for implementing appropriate procedures at the State and local level. It is a State responsibility to

maintain the manual and complete the various right-of-way phases in accordance with Federal law and regulations. The manual provides a documented reference for use by State ROW personnel, local public agencies, affected individuals, and the FHWA. Alternative methods to achieve program objectives have been explored in developing this final rule, specifically, efforts were made to reduce the level of Federal oversight, required recordkeeping, and mandated reporting. The FHWA believes that the need for project level surveillance has diminished since the era of the Interstate program when Federal funding was allocated on the basis of the cost to complete the system. Now States receive a fixed allocation of Federal funds based largely on formula. Hence, it is clearly in the States' best interest to use their Federal-aid funds prudently in all areas, including the acquisition, management, and disposition of real property.

Section 710.203(b)(1) expands Federal reimbursement for right-of-way acquisition costs beyond the current limit of ''generally compensable'' costs. Under former regulations, the States and the Federal government were required to ascertain which types of acquisition costs were generally compensable across the nation and limit Federal reimbursement to those activities. This limits State flexibility, imposes a ''one size fits all'' philosophy, and creates administrative burdens for both the States and the FHWA. State and Federal staff time devoted to isolating and extracting these costs does not add value to the overall transportation program accomplishments. Moreover, States should have greater discretion in determining the best use of formula-allocated Federal funds for acquisition purposes, as they now have in virtually every other aspect of projects funded with Federal-aid.

Since 1991, the kinds of activities that are eligible for Federal-aid funds have greatly increased, and States have received greatly expanded discretion in the use of Federal-aid funds. This final rule echoes statutory and policy changes that have occurred throughout the rest of the Federal-aid program for the surface transportation program.

Part 710, Subpart C—Project Development

The sections in this subpart were taken from part 712, subpart B and revised to provide a brief chronology of the sequence and actions which are necessary to qualify for Federal-aid funding. Section 710.305 provides new agency requirements mandating that in areas in which Clean Air Act conformity determination has lapsed, special coordination is necessary prior to initiating new projects or continuing activity on existing projects. Section 710.311 includes a new TEA–21 provision which provides that an oversight agreement between the STD and the FHWA must specify responsibility for the review of projects at the plan, specification, and estimate (PS&E) stage.

Part 710, Subpart D—Real Property Management

The sections in this subpart were taken from part 712, subpart B and revised to provide that the STD will charge fair market value for the use or disposal of real estate acquired with title 23, U.S.C., funding. Exceptions to the requirement to collect fair market value or rent may be approved by the FHWA. The air rights guidelines are to be maintained on the Internet. The STD may retain the Federal share of rental and disposal proceeds if used for projects eligible under title 23, U.S.C.

Section 710.401 provides that property disposals or any other use of right-of-way along the Interstate requires the STD to obtain FHWA concurrence, but this would no longer be required for non-Interstate highways. Instead, the STD ROW manual would specify procedures for the leasing, maintenance and disposal of property rights, including access control.

Section 710.403(e) of the final rule includes a TEA–21 provision that the Federal share of proceeds from the sale or lease of real estate originally acquired as part of a Federal-aid project (not limited to airspace) could be retained by the STD, if used for projects that would be eligible for funding under title 23, U.S.C. Section 710.403(d) of the final rule requires that, with certain exceptions, the STD charge fair market value for the sale or lease of real property if the property was acquired with Federal assistance made available from the highway trust fund. This reflects the provision of 23 U.S.C. 156, as amended by section 1303 of TEA–21. This revision reduces administrative burdens on States and the FHWA and gives States and local governments greater flexibility in use of funds, while also protecting Federal interests by ensuring funds are used on purposes permitted under title 23, U.S.C. This procedure applies to all disposals, including surplus property from withdrawn Interstate projects, processed subsequent to June 9, 1998, the effective date of TEA–21. Under the rule, income from all property uses and dispositions is treated in a uniform manner.

The final rule in § 710.405 continues to specify procedures the States will be required to follow in use of airspace on the Interstate facilities which have received funding under title 23, U.S.C., in any way. However, these airspace requirements will no longer be mandated for non-Interstate highways.

The final rule in § 710.405 relocates a significant amount of detail relating to the management of airspace. The detailed provisions for airspace, particularly the detailed geometric requirements for the use of property over or under a highway, will be developed and updated through an airspace technical guidance document. An advantage of an airspace technical guidance document is that it is easier to update.

Part 710, Subpart E—Property Acquisition Alternatives

The sections in this subpart were taken from part 712, subparts E and F. Subpart G relating to the right-of-way revolving fund is removed since TEA–21 eliminated the revolving fund.

The final rule in § 710.501 also includes a TEA–21 provision (section 1301) that the value of property acquired by State or local governments before project agreement could be credited toward the State share of project cost, as long as certain conditions, including those relating to the environmental process, have been met. Prior to TEA–21, private property donated to a Federal project could be credited to the non-Federal share, but no such credit was permitted for publicly-owned property. The regulation fulfills TEA–21 statutory provisions by allowing a State credit toward the non-Federal share of the cost of a project, and mandating the credit in the case of locally-owned property. The conditions which must be met to allow the credit would include careful observance of the environmental process.

As a basis for protective buying, significant increased cost may be used as a justification under § 710.503(b).

The final rule in §§ 710.505 and 710.507 contains separate sections for property donations by private parties and contributions by State or local governments to clearly distinguish between these distinct actions, both of which can generate credits for the State or local matching share of a project.

The final rule in § 710.513(b) clarifies that where property is to be used for environmental mitigation or environmental banking, the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Public Law 91–645, 84 Stat. 1894,

as amended) apply in the acquisition of the property.

In general, FHWA approval actions in § 710.409 and 710.405 for disposal of property and use of air space were revised in the final rule to more closely parallel the assumptions of responsibilities principles, as outlined in section 1305 of TEA–21 to stress FHWA approval actions on the Interstate system.

Part 710, Subpart F—Federal Assistance Programs

Sections 710.601 and 710.603 were taken from part 712, subpart F and revised to provide updated references to new legislation and to conform the regulatory references to this final rule.

Part 712—The Acquisition Function

Part 712 is removed from title 23, CFR. The provisions of current part 712, subpart B, concerning general provisions and project procedures are relocated and revised as new part 710, subpart C, project development.

We are removing current part 712, subparts A and C (empty reserved slots) and G, right-of-way revolving fund. Subpart G was eliminated by section 1211(e) of the TEA–21. The revolving fund was a pool of money that could be used by States to acquire right-of-way in advance of the time that State funding was available.

The information in current part 712, subpart D regarding administrative and legal settlements and court awards is relocated to new §§ 710.105 (Definitions) and 710.203 (Funding and reimbursement).

Federal land transfers and direct Federal acquisition policies and procedures found in current part 712, subpart E are relocated to new part 710, subpart F (Federal assistance programs), §§ 710.601 and 710.603.

Current part 712, subpart F, concerning functional replacement of real property in public ownership is relocated to new part 710, subpart E, specifically § 710.509.

A major objective of the final rule is to reorder the regulation so that it follows the same sequence as the development and implementation of a Federal-aid project. This rearrangement in chronological order should aid the public and State transportation departments (STD) in effectively using the regulation.

The final rule also clarifies the State-Federal partnership, which is not considered a major or significant change.

Part 713—Right-of-Way—The Property Management Function

Part 713 is removed from title 23, CFR. Current subpart A concerning purpose, applicability, policies and procedures of property management are relocated to new part 710, subpart A (§§ 710.101 and 710.103) and included in the general statement for real property.

Current part 713, subpart B regarding management of airspace on Federal-aid highway systems for non-highway purposes is relocated to new part 710 at § 710.405 (air rights on the Interstate). The FHWA approval for the use of airspace is limited to Interstate projects. Disposal of rights-of-way provisions found in current part 713, subpart C are relocated to new part 710, subpart D (real property management) at §§ 710.407 (leasing) and 710.409 (disposals). This section clarifies that income received by the STDs may be retained when used for projects eligible under title 23, U.S.C.

Provisions relating to the real estate issues contained in sections 1301 and 1303 of the TEA–21 have been incorporated into these regulations, notably: (1) Allowing credit to the non-Federal share when a State or local government contributes land to a project; (2) allowing States to retain income from sale or lease of real property, as long as the income is used for projects eligible under title 23, U.S.C.; and (3) eliminating the right-of-way revolving fund and clarifying credit for private property donations.

Rulemaking Analyses and Notices

All comments received before the close of business on March 24, 1999, were considered in developing the final rule and late comments were considered to the extent practicable. The comments are available for examination using docket number FHWA 98–4315 in the docket room at the above address or via the electronic addresses provided above.

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

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866, nor is it a significant regulatory action within the Department of Transportation's regulatory policies and procedures. The economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required. The FHWA does not consider this action to be significant because these regulations simplify, clarify, reorganize, and/or eliminate existing requirements. The procedures would simply implement current law and eliminate constraints on FHWA reimbursement for certain right-of-way expenditures when those expenditures are made under provisions of State law. Neither the individual nor cumulative impact of this action is significant because this rule does not alter the funding levels available to the States for Federal or federally-assisted programs covered by the TEA–21.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency has evaluated the effects of this rule on small entities, such as local agencies and businesses. This action would merely update and clarify existing procedures. Also, this rule reduces Federal regulatory requirements and allows State procedures to be utilized. Local entities could also adopt State procedures for advancing Federal-aid projects under the State transportation plan. Accordingly, the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

Environmental Impact

The FHWA has also analyzed this action for the purpose of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and concludes that this action will not have any effect on the quality of the human and natural environment.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined this action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Unfunded Mandates Reform Act of 1995

This rule does not impose a Federal mandate resulting 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. (2 U.S.C. 1531 *et seq.*).

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), 49 U.S.C. 3501–3520, Federal agencies must determine whether requirements contained in rulemaking are subject to the information collection provisions of the PRA.

The FHWA has determined that this final rule places a requirement on the STDs, for Right-of-Way Manuals, that requires Office of Management and Budget (OMB) approval.

The FHWA is allowing STDs to develop and submit the manuals by January 1, 2001. The FHWA estimates the annual burden of this requirement is approximately 4,000 hours on a national basis.

A request for OMB approval of the manual requirement will be submitted in the near future.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

23 CFR Part 130

Grant programs—transportation, Highways and roads, Real property acquisition, Rights-of-way, Reporting and recordkeeping requirements.

23 CFR Part 480

Grant programs—transportation, Highways and roads, Intergovernmental relations, Mass transportation, Rights-of-way, Reporting and recordkeeping requirements.

23 CFR Part 620

Grant programs—transportation, Highways and roads, Rights-of-way.

23 CFR Part 630

Government contracts, Grant programs—transportation, Highways and roads, Project authorization, Reporting and recordkeeping requirements.

23 CFR Part 635

Grant programs—transportation, Highways and roads, Real property acquisition, Reporting and recordkeeping requirements.

23 CFR Part 645

Grant programs—transportation, Highways and roads, Rights-of-way, Utilities.

23 CFR Parts 710, 712, and 713

Grant programs—transportation, Highways and roads, Real property acquisition, Rights-of-way, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, and under the authority of 23 U.S.C. 107, 108, 111, and 315, the FHWA amends 23 CFR chapter I as set forth below:

PART 130—[REMOVED]

1. Remove part 130.

PART 480—[REMOVED]

2. Remove part 480.

PART 620—[AMENDED]

3. The authority citation for part 620 continues to read as follows:

Authority: 23 U.S.C. 315 and 318; 49 CFR 1.48; and 23 CFR 1.32.

4. Revise § 620.202 to read as follows:

§ 620.202 Applicability.

The provisions of this subpart apply to highway facilities where Federal-aid funds have participated in either right-of-way or physical construction costs of a project. The provisions of this subpart apply only to relinquishment of facilities for continued highway purposes. Other real property disposals and modifications or disposal of access rights are governed by the requirements of 23 CFR part 710.

5. Revise § 620.203(j) to read as follows:

§ 620.203 Procedures.

* * * * *

(j) If a relinquishment is to a Federal, State, or local government agency for highway purposes, there need not be a charge to the said agency, nor in such event any credit to Federal funds. If for any reason there is a charge, the STD may retain the Federal share of the proceeds if used for projects eligible under title 23 of the United States Code.

PART 630—[AMENDED]

6. Revise the authority citation for part 630 to read as follows:

Authority: 23 U.S.C. 105, 106, 109, 115, 315, 320, and 402(a); 23 CFR 1.32; 49 CFR 1.48(b).

§ 630.106 [Amended]

7. Amend § 630.106(c)(3) by revising the citation ''23 CFR part 712'' to read ''23 CFR part 710''.

PART 635—[AMENDED]

8. Revise the authority citation for part 635 to read as follows:

Authority: 23 U.S.C. 101(note), 109, 112, 113, 114, 116, 119, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 *et seq.*; sec. 1041(a), Pub. L. 102–240, 105 Stat. 1914; 23 CFR 1.32; 49 CFR 1.48(b).

§ 635.307 [Amended]

9. Amend § 635.307(b)(3) by revising the citation ''23 CFR part 713, subpart A'' to read ''23 CFR 710.403''.

PART 645—[AMENDED]

10. The authority citation for part 645 continues to read as follows:

Authority: 23 U.S.C. 101, 109, 111, 116, 123, and 315; 23 CFR 1.23 and 1.27; 49 CFR 1.48(b); and E.O. 11990, 42 FR 26961 (May 24, 1977).

11. Amend §§ 645.103(c) and 645.111(c) and (d) by revising the words ''23 CFR chapter I, subchapter H, Right-of-Way and Environment'' to read ''23 CFR 710.203''.

11–A. Amend § 645.113 (i) by revising the words ''23 CFR part 712, the Acquisition Functions'' to read ''23 CFR 710.503''.

PART 712—[REMOVED]

12. Remove part 712.

PART 713—[REMOVED]

13. Remove part 713.
14. Revise part 710 to read as follows:

PART 710—RIGHT-OF-WAY AND REAL ESTATE

Subpart A—General

Sec.
710.101 Purpose.
710.103 Applicability.
710.105 Definitions.

Subpart B—Program Administration

710.201 State responsibilities.
710.203 Funding and reimbursement.

Subpart C—Project Development

710.301 General.
710.303 Planning.
710.305 Environmental analysis.
710.307 Project agreement.
710.309 Acquisition.
710.311 Construction advertising.

Subpart D—Real Property Management

710.401 General.
710.403 Management.
710.405 Air rights on the Interstate
710.407 Leasing.
710.409 Disposals.

Subpart E—Property Acquisition Alternatives

710.501 Early acquisition.
710.503 Protective buying and hardship acquisition.
710.505 Real property donations.
710.507 State and local contributions.
710.509 Functional replacement of real property in public ownership.
710.511 Transportation enhancements.
710.513 Environmental mitigation.

Subpart F—Federal Assistance Programs

710.601 Federal land transfer.
710.603 Direct Federal acquisition.

Authority: 23 U.S.C. 101(a), 107, 108, 111, 114, 133, 142(f), 145, 156, 204, 210, 308, 315, 317, and 323; 42 U.S.C. 2000d *et seq.*, 4633, 4651–4655; 49 CFR 1.48(b) and (cc), 18.31, and parts 21 and 24; 23 CFR 1.32.

Subpart A—General

§ 710.101 Purpose.

The primary purpose of the requirements in this part is to ensure the prudent use of Federal funds under title 23 of the United States Code in the acquisition, management, and disposal of real property. In addition to the requirements of this part, other real property related provisions apply and are found at 49 CFR part 24.

§ 710.103 Applicability.

This part applies whenever Federal assistance under title 23 of the United States Code is used. The part applies to programs administered by the Federal Highway Administration. Where Federal funds are transferred to other Federal agencies to administer, those agencies' procedures may be utilized. Additional guidance is available electronically at the FHWA Real Estate services website: *http://www.fhwa.dot.gov/realestate/index.htm*

§ 710.105 Definitions.

(a) Terms defined in 49 CFR part 24, and 23 CFR part 1 have the same meaning where used in this part, except as modified in this section.

(b) The following terms where used in this part have the following meaning:

Access rights means the right of ingress to and egress from a property that abuts a street or highway.

Acquiring agency means a State agency, other entity, or person acquiring real property for title 23 of the United States Code purposes.

Acquisition means activities to obtain an interest in, and possession of, real property.

Air rights means real property interests defined by agreement, and conveyed by deed, lease, or permit for the use of airspace.

Airspace means that space located above and/or below a highway or other transportation facility's established grade line, lying within the horizontal limits of the approved right-of-way or project boundaries.

Damages means the loss in value attributable to remainder property due to severance or consequential damages, as limited by State law, that arise when only part of an owner's property is acquired.

Disposal means the sale of real property or rights therein, including access or air rights, when no longer needed for highway right-of-way or other uses eligible for funding under title 23 of the United States Code.

Donation means the voluntary transfer of privately owned real property for the benefit of a public transportation project without compensation or with compensation at less than fair market value.

Early acquisition means acquisition of real property by State or local governments in advance of Federal authorization or agreement.

Easement means an interest in real property that conveys a right to use a portion of an owner's property or a portion of an owner's rights in the property.

NHS means the National Highway System as defined in 23 U.S.C. 103(b).

Oversight agreement means the project approval and agreement concluded between the State and the FHWA to outline which projects will be monitored at the plans, specifications, and estimate stage by FHWA as required by 23 U.S.C. 106(c)(3).

Real property means land and any improvements thereto, including but not limited to, fee interests, easements, air or access rights, and the rights to control use, leasehold, and leased fee interests.

Relinquishment means the conveyance of a portion of a highway right-of-way or facility by a State highway department to another government agency for continued transportation use. (See 23 CFR part 620, subpart B.)

Right-of-way means real property and rights therein used for the construction, operation, or maintenance of a transportation or related facility funded under title 23 of the United States Code.

Settlement means the result of negotiations based on fair market value in which the amount of just compensation is agreed upon for the purchase of real property or an interest therein. This term includes the following:

(1) An *administrative settlement* is a settlement reached prior to filing a condemnation proceeding based on value related evidence, administrative consideration, or other factors approved by an authorized agency official.

(2) A legal settlement is a settlement reached by a responsible State legal representative after filing a condemnation proceeding, including stipulated settlements approved by the court in which the condemnation action had been filed.

(3) A court settlement or *court award* is any decision by a court that follows a contested trial or hearing before a jury, commission, judge, or other legal entity having the authority to establish the amount of compensation for a taking under the laws of eminent domain.

State agency means a department, agency, or instrumentality of a State or of a political subdivision of a State; any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States; or any person who has the authority to acquire property by eminent domain, for public purposes, under State law.

State transportation department (STD) means the State highway department, transportation department, or other State transportation agency or commission to which title 23 of the United States Code funds are apportioned.

Uneconomic remnant means a remainder property which the acquiring agency has determined has little or no utility or value to the owner.

Uniform Act means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Public Law 91–646, 84 Stat.

1894), and the implementing regulations at 49 CFR part 24.

Subpart B—Program Administration

§ 710.201 State responsibilities.

(a) *Organization.* Each STD shall be adequately staffed, equipped, and organized to discharge its real property-related responsibilities.

(b) *Program oversight.* The STD shall have overall responsibility for the acquisition, management, and disposal of real property on Federal-aid projects. This responsibility shall include assuring that acquisitions and disposals by a State agency are made in compliance with legal requirements of State and Federal laws and regulations.

(c) *Right-of-way (ROW) operations manual.* Each STD which receives funding from the highway trust fund shall maintain a manual describing its right-of-way organization, policies, and procedures. The manual shall describe functions and procedures for all phases of the real estate program, including appraisal and appraisal review, negotiation and eminent domain, property management, and relocation assistance. The manual shall also specify procedures to prevent conflict of interest and avoid fraud, waste, and abuse. The manual shall be in sufficient detail and depth to guide State employees and others involved in acquiring and managing real property. The State manuals should be developed and updated, as a minimum, to meet the following schedule:

(1) The STD shall prepare and submit for approval by FHWA an up-to-date Right-of-Way Operations Manual by no later than January 1, 2001.

(2) Every five years thereafter, the chief administrative officer of the STD shall certify to the FHWA that the current ROW operations manual conforms to existing practices and contains necessary procedures to ensure compliance with Federal and State real estate law and regulation.

(3) The STD shall update the manual periodically to reflect changes in operations and submit the updated materials for approval by the FHWA.

(d) *Compliance responsibility.* The STD is responsible for complying with current FHWA requirements whether or not its manual reflects those requirements.

(e) *Adequacy of real property interest.* The real property interest acquired for all Federal-aid projects funded pursuant to title 23 of the United States Code shall be adequate for the construction, operation, and maintenance of the resulting facility and for the protection of both the facility and the traveling public.

(f) *Recordkeeping.* The acquiring agency shall maintain adequate records of its acquisition and property management activities.

(1) Acquisition records, including records related to owner or tenant displacements, and property inventories of improvements acquired shall be in sufficient detail to demonstrate compliance with this part and 49 CFR part 24. These records shall be retained at least 3 years from either:

(i) The date the State receives Federal reimbursement of the final payment made to each owner of a property and to each person displaced from a property, or

(ii) The date a credit toward the Federal share of a project is approved based on early acquisition activities of the State.

(2) Property management records shall include inventories of real property considered excess to project needs, all authorized uses of airspace, and other leases or agreements for use of real property managed by the STD.

(g) *Procurement.* Contracting for all activities required in support of State right-of-way programs through use of private consultants and other services shall conform to 49 CFR 18.36.

(h) *Use of other public land acquisition organizations or private consultants.* The STD may enter into written agreements with other State, county, municipal, or local public land acquisition organizations or with private consultants to carry out its authorities under paragraph (b) of this section. Such organizations, firms, or individuals must comply with the policies and practices of the STD. The STD shall monitor any such real property acquisition activities to assure compliance with State and Federal law and requirements and is responsible for informing such organizations of all such requirements and for imposing sanctions in cases of material non-compliance.

(i) *Approval actions.* Except for the Interstate system, the STD and the FHWA will agree on the scope of property related oversight and approval actions that the FHWA will be responsible for under this part. The content of the most recent oversight agreement shall be reflected in the State right-of-way operations manual. The oversight agreement, and thus the manual, will indicate for which non-Interstate Federal-aid project submission of materials for review and approval are required.

(j) *Approval of just compensation.* The amount determined to be just compensation shall be approved by a responsible official of the acquiring agency.

(k) *Description of acquisition process.* The STD shall provide persons affected by projects or acquisitions advanced under title 23 of the United States Code with a written description of its real property acquisition process under State law and of the owner's rights, privileges, and obligations. The description shall be written in clear, non-technical language and, where appropriate, be available in a language other than English.

§ 710.203 Funding and reimbursement.

(a) *General conditions.* The following conditions are a prerequisite to Federal participation in the costs of acquiring real property except as provided in § 710.501 for early acquisition:

(1) The project for which the real property is acquired is included in an approved Statewide Transportation Improvement Program (STIP);

(2) The State has executed a project agreement;

(3) Preliminary acquisition activities, including a title search and preliminary property map preparation necessary for the completion of the environmental process, can be advanced under preliminary engineering prior to National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) clearance, while other work involving contact with affected property owners must normally be deferred until after NEPA approval, except as provided in 23 CFR 710.503 for protective buying and hardship acquisition; and in 23 CFR 710.501, early acquisition. Appraisal completion may be authorized as preliminary right-of-way activity prior to completion of the environmental document; and

(4) Costs have been incurred in conformance with State and Federal law requirements.

(b) *Direct eligible costs.* Federal participation in real property costs is limited to the costs of property incorporated into the final project and the associated direct costs of acquisition, unless provided otherwise. Participation is provided for:

(1) *Real property acquisition.* Usual costs and disbursements associated with real property acquisition required under the laws of the State, including the following:

(i) The cost of contracting for private acquisition services or the cost associated with the use of local public agencies.

(ii) The cost of acquisition activities, such as, appraisal, appraisal review, cost estimates, relocation planning,

right-of-way plan preparation, title work, and similar necessary right-of-way related work.

(iii) The cost to acquire real property, including incidental expenses.

(iv) The cost of administrative settlements in accordance with 49 CFR 24.102(i), legal settlements, court awards, and costs incidental to the condemnation process.

(v) The cost of minimum payments and appraisal waiver amounts included in the State approved manual.

(2) *Relocation assistance and payments.* Payments made incidental to and associated with the displacement from acquired property under 49 CFR part 24.

(3) *Damages.* The cost of severance and/or consequential damages to remaining real property resulting from a partial acquisition, actual or constructive, of real property for a project based on elements compensable under applicable State law.

(4) *Property management.* The net cost of managing real property prior to and during construction to provide for maintenance, protection, and the clearance and disposal of improvements until final project acceptance.

(5) *Payroll-related expenses and technical guidance.* Salary and related expenses of employees of an acquiring agency are eligible costs in accordance with OMB Circular A–87 (available at http://www.whitehouse.gov/omb/circulars). This includes State costs incurred for managing or providing technical guidance, consultation or oversight on projects where right-of-way services are performed by a political subdivision or others.

(6) *Property not incorporated into a project funded under title 23 of the United States Code.* The cost of property not incorporated into a project may be eligible for reimbursement in the following circumstances:

(i) *General.* Costs for construction material sites, property acquisitions to a logical boundary, or for eligible transportation enhancement, sites for disposal of hazardous materials, environmental mitigation, environmental banking activities, or last resort housing.

(ii) *Easements not incorporated into the right-of-way.* The cost of acquiring easements outside the right-of-way for permanent or temporary use.

(7) *Uneconomic remnants.* The cost of uneconomic remnants purchased in connection with the acquisition of a partial taking for the project as required by the Uniform Act.

(8) *Access rights.* Payment for full or partial control of access on an existing highway (*i.e.*, one not on a new location), based on elements compensable under applicable State law. Participation does not depend on another real property interest being acquired or on further construction of the highway facility.

(9) *Utility and railroad property.* (i) The cost to replace operating real property owned by a displaced utility or railroad and conveyed to an STD for a highway project, as provided in 23 CFR part 140, subpart I, Reimbursement for Railroad Work, and 23 CFR part 645, Subpart A, Utility Relocations, Adjustments and Reimbursement, and 23 CFR part 646, Subpart B, Railroad-Highway Projects.

(ii) Participation in the cost of acquiring non-operating utility or railroad real property shall be in the same manner as that used in the acquisition of other privately owned property.

(c) *Withholding payment.* The FHWA may withhold payment under the conditions in 23 CFR 1.36 where the State fails to comply with Federal law or regulation, State law, or under circumstances of waste, fraud, and abuse.

(d) *Indirect costs.* Indirect costs may be claimed under the provisions of OMB Circular A–87. Indirect costs may be included on Federal-aid billings after the indirect cost rate has been approved by FHWA.

Subpart C—Project Development

§ 710.301 General.

The project development process typically follows a sequence of actions and approvals in order to qualify for funding. The key steps in this process are provided in this subpart.

§ 710.303 Planning.

State and local governments conduct metropolitan and statewide planning to develop coordinated, financially constrained system plans to meet transportation needs for local and statewide systems, under FHWA's planning regulations contained in 23 CFR part 450. In addition, air quality non-attainment areas must meet the requirements of the U.S. EPA Transportation conformity regulations (40 CFR parts 51 and 93). Projects must be included in an approved State Transportation Improvement Program (STIP) in order to be eligible for Federal-aid funding.

§ 710.305 Environmental analysis.

The National Environmental Policy Act (NEPA) process, as described in FHWA's NEPA regulations in 23 CFR part 771, normally must be conducted and concluded with a record of decision (ROD) or equivalent before Federal funds can be placed under agreement for acquisition of right-of-way. Where applicable, a State also must complete Clean Air Act (42 U.S.C. 7401 *et seq.*) project level conformity analysis. In areas in which the Clean Air Act conformity determination has lapsed, acquiring agencies must coordinate with Federal Highway Administration for special instructions prior to initiating new projects or continuing activity on existing projects. At the time of processing an environmental document, a State may request reimbursement of costs incurred for early acquisition, provided conditions prescribed in 23 U.S.C. 108(c) and 23 CFR 710.501, are satisfied.

§ 710.307 Project agreement.

As a condition of Federal-aid, the STD shall obtain FHWA authorization in writing or electronically before proceeding with any real property acquisitions, including hardship acquisition and protective buying (see 23 CFR 710.503). The STD must prepare a project agreement in accordance with 23 CFR part 630, subpart C. The agreement shall be based on an acceptable estimate for the cost of acquisition. On projects where the initial project agreement was executed after June 9, 1998, a State may request credit toward the non-Federal share, for early acquisitions, donations, or other contributions applied to the project provided conditions in 23 U.S.C. 323 and 23 CFR 710.501, are satisfied.

§ 710.309 Acquisition.

The process of acquiring real property includes appraisal, appraisal review, establishing just compensation, negotiations, administrative and legal settlements, and condemnation. The State shall conduct acquisition and related relocation activities in accordance with 49 CFR part 24.

§ 710.311 Construction advertising.

The State must manage real property acquired for a project until it is required for construction. Clearance of improvements can be scheduled during the acquisition phase of the project using sale/removal agreements, separate demolition contracts, or be included as a work item in the construction contract. On Interstate projects, prior to advertising for construction, the State shall develop ROW availability statements and certifications related to project acquisitions as required by 23 CFR 635.309. For non-Interstate projects, the oversight agreement must specify responsibility for the review and

approval of the ROW availability statements and certifications. Generally, for non-NHS projects, the State has full responsibility for determining that right-of-way is available for construction.

Subpart D—Real Property Management

§ 710.401 General.

This subpart describes the acquiring agency's responsibilities to control the use of real property required for a project in which Federal funds participated in any phase of the project. Prior to allowing any change in access control or other use or occupancy of acquired property along the Interstate, the STD shall secure an approval from the FHWA for such change or use. The STD shall specify in the State's ROW operations manual, procedures for the rental, leasing, maintenance, and disposal of real property acquired with title 23 of the United States Code funds. The State shall assure that local agencies follow the State's approved procedures, or the local agencies own procedures if approved for use by the STD.

§ 710.403 Management.

(a) The STD must assure that all real property within the boundaries of a federally-aided facility is devoted exclusively to the purposes of that facility and is preserved free of all other public or private alternative uses, unless such alternative uses are permitted by Federal regulation or the FHWA. An alternative use must be consistent with the continued operation, maintenance, and safety of the facility, and such use shall not result in the exposure of the facility's users or others to hazards.

(b) The STD shall specify procedures in the State manual for determining when a real property interest is no longer needed. These procedures must provide for coordination among relevant STD organizational units, including maintenance, safety, design, planning, right-of-way, environment, access management, and traffic operations.

(c) The STD shall evaluate the environmental effects of disposal and leasing actions requiring FHWA approval as provided in 23 CFR part 771.

(d) Acquiring agencies shall charge current fair market value or rent for the use or disposal of real property interests, including access control, if those real property interests were obtained with title 23 of the United States Code funding, except as provided in paragraphs (d) (1) through (5) of this section. Since property no longer needed for a project was acquired with public funding, the principle guiding disposal would normally be to sell the property at fair market value and use the funds for transportation purposes. The term fair market value as used for acquisition and disposal purposes is as defined by State statute and/or State court decisions. Exceptions to the general requirement for charging fair market value may be approved in the following situations:

(1) With FHWA approval, when the STD clearly shows that an exception is in the overall public interest for social, environmental, or economic purposes; nonproprietary governmental use; or uses under 23 U.S.C. 142(f), Public Transportation. The STD manual may include criteria for evaluating disposals at less than fair market value. Disposal for public purposes may also be at fair market value. The STD shall submit requests for such exceptions to the FHWA in writing.

(2) Use by public utilities in accordance with 23 CFR part 645.

(3) Use by Railroads in accordance with 23 CFR part 646.

(4) Use for Bikeways and pedestrian walkways in accordance with 23 CFR part 652.

(5) Use for transportation projects eligible for assistance under title 23 of the United States Code.

(e) The Federal share of net income from the sale or lease of excess real property shall be used by the STD for activities eligible for funding under title 23 of the United States Code. Where project income derived from the sale or lease of excess property is used for subsequent title 23 projects, use of the income does not create a Federal-aid project.

(f) No FHWA approval is required for disposal of property which is located outside of the limits of the right-of-way if Federal funds did not participate in the acquisition cost of the property.

(g) Highway facilities in which Federal funds participated in either the right-of-way or construction may be relinquished to another governmental agency for continued highway use under the provisions of 23 CFR 620, subpart B.

§ 710.405 Air rights on the Interstate.

(a) The FHWA policies relating to management of airspace on the Interstate for non-highway purposes are included in this section. Although this section deals specifically with approval actions on the Interstate, any use of airspace contemplated by a STD must assure that such occupancy, use, or reservation is in the public interest and does not impair the highway or interfere with the free and safe flow of traffic as provided in 23 CFR 1.23.

(1) This subpart applies to Interstate facilities which received title 23 of the United States Code assistance in any way.

(2) This subpart does not apply to the following:

(i) Non-Interstate highways.

(ii) Railroads and public utilities which cross or otherwise occupy Federal-aid highway right-of-way.

(iii) Relocations of railroads or utilities for which reimbursement is claimed under 23 CFR part 140, subparts E and H.

(iv) Bikeways and pedestrian walkways as covered in 23 CFR part 652.

(b) A STD may grant rights for temporary or permanent occupancy or use of Interstate system airspace if the STD has acquired sufficient legal right, title, and interest in the right-of-way of a federally assisted highway to permit the use of certain airspace for non-highway purposes; and where such airspace is not required presently or in the foreseeable future for the safe and proper operation and maintenance of the highway facility. The STD must obtain prior FHWA approval, except for paragraph (c) of this section.

(c) An STD may make lands and rights-of-way available without charge to a publicly owned mass transit authority for public transit purposes whenever the public interest will be served, and where this can be accomplished without impairing automotive safety or future highway improvements

(d) An individual, company, organization, or public agency desiring to use airspace shall submit a written request to the STD. If the STD recommends approval, it shall forward an application together with its recommendation and any necessary supplemental information including the proposed airspace agreement to the FHWA. The submission shall affirmatively provide for adherence to all policy requirements contained in this subpart and conform to the provisions in the FHWA's Airspace Guidelines at: *http://www.fhwa.dot.gov/realestate/index.htm.*

§ 710.407 Leasing.

(a) Leasing of real property acquired with title 23 of the United States Code, funds shall be covered by an agreement between the STD and lessee which contains provisions to insure the safety and integrity of the federally funded facility. It shall also include provisions governing lease revocation, removal of improvements at no cost to the FHWA, adequate insurance to hold the State and the FHWA harmless,

nondiscrimination, access by the STD and the FHWA for inspection, maintenance, and reconstruction of the facility.

(b) Where a proposed use requires changes in the existing transportation facility, such changes shall be provided without cost to Federal funds unless otherwise specifically agreed to by the STD and the FHWA.

(c) Proposed uses of real property shall conform to the current design standards and safety criteria of the Federal Highway Administration for the functional classification of the highway facility in which the property is located.

§ 710.409 Disposals.

(a) Real property interests determined to be excess to transportation needs may be sold or conveyed to a public entity or to a private party in accordance with § 710.403(c).

(b) Federal, State, and local agencies shall be afforded the opportunity to acquire real property interests considered for disposal when such real property interests have potential use for parks, conservation, recreation, or related purposes, and when such a transfer is allowed by State law. When this potential exists, the STD shall notify the appropriate resource agencies of its intentions to dispose of the real property interests. The notifications can be accomplished by placing the appropriate agencies on the States' disposal notification listing.

(c) Real property interests may be retained by the STD to restore, preserve, or improve the scenic beauty and environmental quality adjacent to the transportation facility.

(d) Where the transfer of properties to other agencies at less than fair market value for continued public use is clearly justified as in the public interest and approved by the FHWA, the deed shall provide for reversion of the property for failure to continue public ownership and use. Where property is sold at fair market value no reversion clause is required. Disposal actions described in 23 CFR 710.403(d)(1) for less than fair market value require a public interest determination and FHWA approval, consistent with that section.

Subpart E—Property Acquisition Alternatives

§ 710.501 Early acquisition.

(a) *Real property acquisition.* The State may initiate acquisition of real property at any time it has the legal authority to do so based on program or project considerations. The State may undertake early acquisition for corridor preservation, access management, or other purposes.

(b) *Eligible costs.* Acquisition costs incurred by a State agency prior to executing a project agreement with the FHWA are not eligible for Federal-aid reimbursement. However, such costs may become eligible for use as a credit towards the State's share of a Federal-aid project if the following conditions are met:

(1) The property was lawfully obtained by the State;

(2) The property was not land described in 23 U.S.C. 138;

(3) The property was acquired in accordance with the provisions of 49 CFR part 24;

(4) The State complied with the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4);

(5) The State determined and the FHWA concurs that the action taken did not influence the environmental assessment for the project, including:

(i) The decision on need to construct the project;

(ii) The consideration of alternatives; and

(iii) The selection of the design or location; and

(6) The property will be incorporated into a Federal-aid project.

(7) The original project agreement covering the project was executed on or after June 9, 1998.

(c) *Reimbursement.* In addition to meeting all provisions in paragraph (b) of this section, the FHWA approval for reimbursement for early acquisition costs, including costs associated with displacement of owners or tenants, requires the STD to demonstrate that:

(1) Prior to acquisition, the STD made the certifications and determinations required by 23 U.S.C. 108(c)(2)(C) and (D); and

(2) The STD obtained concurrence from the Environmental Protection Agency in the findings made under paragraph (b)(5) of this section regarding the NEPA process.

§ 710.503 Protective buying and hardship acquisition.

(a) *General conditions.* Prior to the STD obtaining final environmental approval, the STD may request FHWA agreement to provide reimbursement for advance acquisition of a particular parcel or a limited number of parcels, to prevent imminent development and increased costs on the preferred location (Protective Buying), or to alleviate hardship to a property owner or owners on the preferred location (Hardship Acquisition), provided the following conditions are met:

(1) The project is included in the currently approved STIP;

(2) The STD has complied with applicable public involvement requirements in 23 CFR parts 450 and 771;

(3) A determination has been completed for any property subject to the provisions of 23 U.S.C. 138; and

(4) Procedures of the Advisory Council on Historic Preservation are completed for properties subject to 16 U.S.C. 470(f) (historic properties).

(b) *Protective buying.* The STD must clearly demonstrate that development of the property is imminent and such development would limit future transportation choices. A significant increase in cost may be considered as an element justifying a protective purchase.

(c) *Hardship acquisitions.* The STD must accept and concur in a request for a hardship acquisition based on a property owner's written submission that:

(1) Supports the hardship acquisition by providing justification, on the basis of health, safety or financial reasons, that remaining in the property poses an undue hardship compared to others; and

(2) Documents an inability to sell the property because of the impending project, at fair market value, within a time period that is typical for properties not impacted by the impending project.

(d) *Environmental decisions.* Acquisition of property under this section shall not influence the environmental assessment of a project, including the decision relative to the need to construct the project or the selection of a specific location.

§ 710.505 Real property donations.

(a) *Donations of property being acquired.* A non-governmental owner whose real property is required for a Federal-aid project may donate the property to the STD. Prior to accepting the property, the owner must be informed by the agency of his/her right to receive just compensation for the property. The owner shall also be informed of his/her right to an appraisal of the property by a qualified appraiser, unless the STD determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at no more than $2500, or the State appraisal waiver limit approved by the FHWA, whichever is greater. All donations of property received prior to the approval of the NEPA document must meet environmental requirements as specified in 23 U.S.C. 323(d).

(b) *Credit for donations.* Donations of real property may be credited to the

State's matching share of the project. Credit to the State's matching share for donated property shall be based on fair market value established on the earlier of the following: either the date on which the donation becomes effective, or the date on which equitable title to the property vests in the State. The fair market value shall not include increases or decreases in value caused by the project. Donations may be made at anytime during the development of a project. The STD shall develop sufficient documentation to indicate compliance with paragraph (a) of this section and to support the amount of credit applied. The total credit cannot exceed the State's pro-rata share under the project agreement to which it is applied.

(c) *Donations and conveyances in exchange for construction features or services.* A property owner may donate property in exchange for construction features or services. The value of the donation is limited to the fair market value of property donated less the cost of the construction features or services. If the value of the donated property exceeds the cost of the construction features or services, the difference may be eligible for a credit to the State's share of project costs.

§ 710.507 State and local contributions.

(a) *General.* Real property owned by State and local governments incorporated within a federally funded project can be used as a credit toward the State matching share of total project cost. A credit cannot exceed the State's matching share required by the project agreement.

(b) *Effective date.* Credits can be applied to projects where the initial project agreement is executed after June 9, 1998.

(c) *Exemptions.* Credits are not available for lands acquired with any form of Federal financial assistance, or for lands already incorporated and used for transportation purposes.

(d) *State contributions.* Real property acquired with State funds and required for federally-assisted projects may support a credit toward the non-Federal share of project costs. The STD must prepare documentation supporting all credits including:

(1) A certification that the acquisition satisfied the conditions in 23 CFR 710.501(b); and

(2) Justification of the value of credit applied. Acquisition costs incurred by the State to acquire title can be used as justification for the value of the real property.

(e) *Credit for local government contributions.* A contribution by a unit of local government of real property which is offered for credit, in connection with a project eligible for assistance under this title, shall be credited against the State share of the project at fair market value of the real property. Property may also be presented for project use with the understanding that no credit for its use is sought. The STD shall assure that the acquisition satisfied the conditions in 23 CFR 710.501(b), and that documentation justifies the amount of the credit.

§ 710.509 Functional replacement of real property in public ownership.

(a) *General.* When publicly owned real property, including land and/or facilities, is to be acquired for a Federal-aid highway project, in lieu of paying the fair market value for the real property, the State may provide compensation by functionally replacing the publicly owned real property with another facility which will provide equivalent utility.

(b) *Federal participation.* Federal-aid funds may participate in functional replacement costs only if:

(1) Functional replacement is permitted under State law and the STD elects to provide it.

(2) The property in question is in public ownership and use.

(3) The replacement facility will be in public ownership and will continue the public use function of the acquired facility.

(4) The State has informed the agency owning the property of its right to an estimate of just compensation based on an appraisal of fair market value and of the option to choose either just compensation or functional replacement.

(5) The FHWA concurs in the STD determination that functional replacement is in the public interest.

(6) The real property is not owned by a utility or railroad.

(c) *Federal land transfers.* Use of this section for functional replacement of real property in Federal ownership shall be in accordance with Federal land transfer provisions in subpart F of this part.

(d) *Limits upon participation.* Federal-aid participation in the costs of functional replacement are limited to costs which are actually incurred in the replacement of the acquired land and/or facility and are:

(1) Costs for facilities which do not represent increases in capacity or betterments, except for those necessary to replace utilities, to meet legal, regulatory, or similar requirements, or to meet reasonable prevailing standards; and

(2) Costs for land to provide a site for the replacement facility.

(e) *Procedures.* When a State determines that payments providing for functional replacement of public facilities are allowable under State law, the State will incorporate within the State's ROW operating manual full procedures covering review and oversight that will be applied to such cases.

§ 710.511 Transportation enhancements.

(a) *General.* Section 133(b) (8) of title 23 of the United States Code authorizes the expenditure of surface transportation funds for transportation enhancement activities (TEA). Transportation enhancement activities which involve the acquisition, management, and disposition of real property, and the relocation of families, individuals, and businesses, are governed by the general requirements of the Federal-aid program found in titles 23 and 49 of the Code of Federal Regulations (CFR), except as specified in paragraph (b)(3) of this section.

(b) *Requirements.* (1) Displacements for TEA are subject to the Uniform Act.

(2) Acquisitions for TEA are subject to the Uniform Act except as provided in paragraphs (b)(3), (b)(4), and (b)(5) of this section.

(3) Entities acquiring real property for TEA who lack the power of eminent domain may comply with the Uniform Act by meeting the limited requirements under 49 CFR 24.101(a)(2).

(4) The requirements of the Uniform Act do not apply when real property acquired for a TEA was purchased from a third party by a qualified conservation organization, and—

(i) The conservation organization is not acting on behalf of the agency receiving TEA or other Federal-aid funds, and

(ii) There was no Federal approval of property acquisition prior to the involvement of the conservation organization. [''Federal approval of property acquisition'' means the date of the approval of the environmental document or project authorization/agreement, whichever is earlier. ''Involvement of the conservation organization'' means the date the organization makes a legally binding offer to acquire a real property interest, including an option to purchase, in the property.]

(5) When a qualified conservation organization acquires real property for a project receiving Federal-aid highway funds on behalf of an agency with eminent domain authority, the

requirements of the Uniform Act apply as if the agency had acquired the property itself.

(6) When, subsequent to Federal approval of property acquisition, a qualified conservation organization acquires real property for a project receiving Federal-aid highway funds, and there will be no use or recourse to the power of eminent domain, the limited requirements of 49 CFR 24.101(a)(2) apply.

(c) *Property management.* Real property acquired with TEA funds shall be managed in accordance with the property management requirements provided in subpart D of this part. Any use of the property for purposes other than that for which the TEA funds were provided must be consistent with the continuation of the original use. When the original use of the real property is converted by sale or lease to another use inconsistent with the original use, the STD shall assure that the fair market value or rent is charged and the proceeds reapplied to projects eligible under title 23 of the United States Code.

§ 710.513 Environmental mitigation.

(a) The acquisition and maintenance of land for wetlands mitigation, wetlands banking, natural habitat, or other appropriate environmental mitigation is an eligible cost under the Federal-aid program. FHWA participation in wetland mitigation sites and other mitigation banks is governed by 23 CFR part 777.

(b) Environmental acquisitions or displacements by both public agencies and private parties are covered by the Uniform Act when they are the result of a program or project undertaken by a Federal agency or one that receives Federal financial assistance. This includes real property acquired for a wetland bank, or other environmentally related purpose, if it is to be used to mitigate impacts created by a Federal-aid highway project.

Subpart F—Federal Assistance Programs

§ 710.601 Federal land transfer.

(a) The provisions of this subpart apply to any project undertaken with funds for the National Highway System. When the FHWA determines that a strong Federal transportation interest exists, these provisions may also be applied to highway projects that are eligible for Federal-aid under Chapters 1 and 2 of title 23, of the United States Code, and to highway-related transfers that are requested by a State in conjunction with a military base closure under the Defense Base Closure and Realignment Act of 1990 (Public Law 101–510, 104 Stat. 1808, as amended).

(b) Sections 107(d) and 317 of title 23, of the United States Code provide for the transfer of lands or interests in lands owned by the United States to an STD or its nominee for highway purposes.

(c) The STD may file an application with the FHWA, or can make application directly to the land-owning agency if the land-owning agency has its own authority for granting interests in land.

(d) Applications under this section shall include the following information:

(1) The purpose for which the lands are to be used;

(2) The estate or interest in the land required for the project;

(3) The Federal-aid project number or other appropriate references;

(4) The name of the Federal agency exercising jurisdiction over the land and identity of the installation or activity in possession of the land;

(5) A map showing the survey of the lands to be acquired;

(6) A legal description of the lands desired; and

(7) A statement of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4332, *et seq.*) and any other applicable Federal environmental laws, including the National Historic Preservation Act (16 U.S.C. 470(f)), and 23 U.S.C. 138.

(e) If the FHWA concurs in the need for the transfer, the land-owning agency will be notified and a right-of-entry requested. The land-owning agency shall have a period of four months in which to designate conditions necessary for the adequate protection and utilization of the reserve or to certify that the proposed appropriation is contrary to the public interest or inconsistent with the purposes for which such land or materials have been reserved. The FHWA may extend the four-month reply period at the timely request of the land-owning agency for good cause.

(f) Deeds for conveyance of lands or interests in lands owned by the United States shall be prepared by the STD and certified by an attorney licensed within the State as being legally sufficient. Such deeds shall contain the clauses required by the FHWA and 49 CFR 21.7(a)(2). After the STD prepares the deed, it will submit the proposed deed with the certification to the FHWA for review and execution.

(g) Following execution, the STD shall record the deed in the appropriate land record office and so advise the FHWA and the concerned agency.

(h) When the need for the interest acquired under this subpart no longer exists, the STD must restore the land to the condition which existed prior to the transfer and must give notice to the FHWA and to the concerned Federal agency that such interest will immediately revert to the control of the Federal agency from which it was appropriated or to its assigns. Alternative arrangements may be made for the sale or reversion or restoration of the lands no longer required as part of a memorandum of understanding or separate agreement.

§ 710.603 Direct Federal acquisition.

(a) The provisions of this section apply to any land and or improvements needed in connection with any project on the Interstate System, defense access roads, public lands highways, park roads, parkways, Indian reservation roads, and projects performed by the FHWA in cooperation with Federal and State agencies. For projects on the Interstate System and defense access roads, the provisions of this part are applicable only where the State is unable to acquire the required right-of-way or is unable to obtain possession with sufficient promptness.

(b) To enable the FHWA to make the necessary finding to proceed with the acquisition of the rights-of-way, the STDs written application for Federal acquisition shall include:

(1) Justification for the Federal acquisition of the lands or interests in lands;

(2) The date the FHWA authorized the STD to commence right-of-way acquisition, the date of the project agreement and a statement that the agreement contains the provisions required by 25 U.S.C. 111;

(3) The necessity for acquisition of the particular lands under request;

(4) A statement of the specific interests in lands to be acquired, including the proposed treatment of control of access;

(5) The STDs intentions with respect to the acquisition, subordination, or exclusion of outstanding interests, such as minerals and utility easements, in connection with the proposed acquisition;

(6) A statement on compliance with the provisions of part 771 of this chapter;

(7) Adequate legal descriptions, plats, appraisals, and title data;

(8) An outline of the negotiations which have been conducted by the STD with landowners;

(9) An agreement that the STD will pay its pro rata share of costs incurred in the acquisition of, or the attempt to acquire rights-of-way; and

(10) A statement that assures compliance with the applicable provisions of the Uniform Act. (42 U.S.C. 4601, *et seq.*)

(c) If the landowner tenders a right-of-entry or other right of possession document required by State law any time before the FHWA makes a determination that the STD is unable to acquire the rights-of-way with sufficient promptness, the STD is legally obligated to accept such tender and the FHWA may not proceed with Federal acquisition.

(d) If the STD obtains title to a parcel prior to the filing of the Declaration of Taking, it shall notify the FHWA and immediately furnish the appropriate U.S. Attorney with a disclaimer together with a request that the action against the landowner be dismissed (ex parte) from the proceeding and the estimated just compensation deposited into the registry of the court for the affected parcel be withdrawn after the appropriate motions are approved by the court.

(e) When the United States obtains a court order granting possession of the real property, the FHWA shall authorize the STD to take over supervision of the property. The authorization shall include, but need not be limited to, the following:

(1) The right to take possession of unoccupied properties;

(2) The right to give 90 days notice to owners to vacate occupied properties and the right to take possession of such properties when vacated;

(3) The right to permit continued occupancy of a property until it is required for construction and, in those instances where such occupancy is to be for a substantial period of time, the right to enter into rental agreements, as appropriate, to protect the public interest;

(4) The right to request assistance from the U.S. Attorney in obtaining physical possession where an owner declines to comply with the court order of possession;

(5) The right to clear improvements and other obstructions;

(6) Instructions that the U.S. Attorney be notified prior to actual clearing, so as to afford him an opportunity to view the lands and improvements, to obtain appropriate photographs, and to secure appraisals in connection with the preparation of the case for trial;

(7) The requirement for appropriate credits to the United States for any net salvage or net rentals obtained by the State, as in the case of right-of-way acquired by the State for Federal-aid projects; and

(8) Instructions that the authority granted to the STD is not intended to preclude the U.S. Attorney from taking action, before the STD has made arrangements for removal, to reach a settlement with the former owner which would include provision for removal.

(f) If the Federal Government initiates condemnation proceedings against the owner of real property in a Federal court and the final judgment is that the Federal agency cannot acquire the real property by condemnation, or the proceeding is abandoned, the court is required by law to award such a sum to the owner of the real property that in the opinion of the court provides reimbursement for the owner's reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings.

(g) As soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of the compensation in a Federal condemnation, the FHWA shall reimburse the owner to the extent deemed fair and reasonable, the following costs:

(1) Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;

(2) Penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States or the effective date of possession, whichever is the earlier.

(h) The lands or interests in lands, acquired under this section, will be conveyed to the State or the appropriate political subdivision thereof, upon agreement by the STD, or said subdivision to:

(1) Maintain control of access where applicable;

(2) Accept title thereto;

(3) Maintain the project constructed thereon;

(4) Abide by any conditions which may set forth in the deed; and

(5) Notify the FHWA at the appropriate time that all the conditions have been performed by the State.

(i) The deed from the United States to the State, or to the appropriate political subdivision thereof, shall include the conditions required by 49 CFR part 21. The deed shall be recorded by the grantee in the appropriate land record office, and the FHWA shall be advised of the recording date.

Issued on: December 13, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 99–32908 Filed 12–20–99; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 296

National Reconnaissance Office Freedom of Information Act Program Regulation

AGENCY: National Reconnaissance Office, DoD.

ACTION: Final rule.

SUMMARY: This final rule establishes the National Reconnaissance Office (NRO) regulation governing the disclosure of information under the Freedom of Information Act. This part is reissued pursuant to the Department of Defense rule, which implements the Freedom of Information Act and it conforms to the Department's rule and schedule. As a component of the Department of Defense, the Department rules and schedules with respect to the Freedom of Information Act, as amended, will also be the policy of the NRO.

EFFECTIVE DATE: October 20, 1999.

FOR FURTHER INFORMATION CONTACT: Barbara Friemann, Chief, Information Access and Release Center, (703) 808–5029, Reading Room Appointments (703) 808–2474 or (703) 808–5500.

SUPPLEMENTARY INFORMATION: The NRO published a final rule of this part on November 16, 1993 (58 FR 60382). This rule does not constitute a significant regulatory action within the meaning of Executive Order 12866. Neither the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), nor the reporting or record-keeping requirements under the Paperwork Reduction Act of 1995 (Pub. L. 104–13) apply. It is hereby certified that this final rule does not exert a significant economic impact nor impose new requirements on a number of small entities. This determination is made based upon the fact that the rule merely codifies the procedural aspects of the NRO Freedom of Information Act Program, as amended by the ''Electronic Freedom of Information Act Amendment of 1996''. It includes guidance on how and from whom to request information pertaining to the NRO.

List of Subjects 32 CFR Part 296

Freedom of information.

Accordingly, 32 CFR part 296 is revised to read as follows:

PART 296—NATIONAL RECONNAISSANCE OFFICE FREEDOM OF INFORMATION ACT PROGRAM REGULATION

Sec.
296.1 Purpose.
296.2 Definitions.
296.3 Indexes.
296.4 Procedures for request of records.
296.5 Appeals.
296.6 Reading room.

Authority: 5 U.S.C. 552, as amended.

§ 296.1 Purpose.

The purpose of this part is to provide policies and procedures for the National Reconnaissance Office (NRO) implementation of the Freedom of Information Act (5 U.S.C. 552 as amended) (FOIA), and to promote uniformity in the NRO FOIA program.

§ 296.2 Definitions.

The terms used in this part, with the exception of the following, are defined in 32 CFR part 286:

(a) *Freedom of Information Act appellate authority.* The Chief of Staff, NRO.

(b) *Initial denial authority.* The Chief, Information Access & Release Center NRO.

§ 296.3 Indexes.

(a) The NRO does not originate final orders, opinions, statements of policy, interpretations, staff manuals or instructions that affect a member of the public of the type covered by the indexing requirement of 5 U.S.C. 552(a)(2). The Director, NRO, has therefore determined, pursuant to pertinent statutory and executive order requirements, that it is unnecessary and impracticable to publish an index of the type required by 5 U.S.C. 552(a)(2), except the index noted in paragraph (b) of this section.

(b) A general index of FOIA-processed (a)(2) records shall be made available to the public, both in hard copy and electronically by December 31, 1999.

§ 296.4 Procedures for request of records.

(a) *Requests.* Requests for access to records of the National Reconnaissance Office may be filed by mail or FAX addressed to the Chief, Information Access and Release Center, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715, FAX Number (703) 808–5082. Requests need not be made on any special form but must be by letter or FAX or other written statement identifying the request as a Freedom of Information Act request and setting forth sufficient information reasonably describing the requested record. All requests should contain a willingness to pay assessable FOIA fees.

(b) *Date of acceptance.* The requestor shall be promptly informed by letter of the date of acceptance of the request. The search conducted pursuant to that request shall be for records in existence as of and through the acceptance date.

(c) *Determination and notification.* When the requested record has been located and identified, the Initial Denial Authority shall determine whether the record is one which, consistent with statutory requirements, executive orders and appropriate directives, may be released or may contain information that is exempt under the provisions of 5 U.S.C. 552. Normally, the Initial Denial Authority shall notify the requestor of the determination within 20 working days of the receipt of the request.

(d) *Multi-track processing.* The NRO has 3 queues in which requests may be processed when a significant number of pending requests prevents a response within 20 working days, all based on the date of receipt, first-in first-out, and the amount of work, time, and volume involved in processing the requests.

(See subparagraph C1.5.4.2. of DoD 5400.7–R [1], Sept 1998). The queues are:

(1) *Simple.* Those requests which are easily handled and processed.

(2) *Complex.* Those requests which are complicated by multiple searches, co-ordinations, consultations, volume etc.

(3) *Expedited.* Expedited processing shall be granted to a requestor after the requestor asks for and demonstrates a compelling need for the information (paragraph C1.5.4.3. of DoD 5400.7–R)

(e) *Extension of response time.* In unusual circumstances when additional time is needed to respond, the Initial Denial Authority shall notify the requestor in writing of the reasons therefore, and an anticipated date, not to exceed 10 additional working days, on which a determination is expected to be dispatched. The Initial Denial Authority will normally send this notification within 20 working days from receipt of the request. Should it be determined that this 10 additional working days cannot be met, the requestor shall be notified and offered the opportunity to limit or narrow the scope of the request in order to facilitate faster processing, or to arrange an alternative time for processing the request (paragraph C1.5.2.6. of DoD 5400.7–R)

(f) *Fees.*

(1) *General.* As a component of the Department of Defense, the applicable published Department rules and schedules with respect to the schedule of fees chargeable and waiver of fees will also be the policy of NRO. See 32 CFR 286.33.

(2) *Advance payments.* (i) Where a total fee to be assessed is estimated to exceed $250, advance payment of the estimated fee will be required before processing of the request, except where assurances of full payment are received from a requestor with a history of prompt payment. Where a requestor has previously failed to pay a fee within 30 calendar days of the date of the billing, the requestor will be required to pay the full amount owed, plus any applicable interest, or demonstrate that he or she has paid the fee, as well as make an advance payment of the full amount of any estimated fee before processing of a new or pending request continues.

(ii) For all other requests, advance payment, i.e., a payment made before work is commenced, will not be required. Payment for work already completed is not an advance payment. Responses will not be held pending receipt of fees from requestors with a history of prompt payment. Fees should be paid by certified check or postal money order forwarded to the Chief, Information Access and Release Center (IARC) and made payable to the Treasurer of the United States.

§ 296.5 Appeals.

Any person denied access to records, denied a fee waiver, involved in a dispute regarding fee estimates, or who considers a no record determination, or any determination to be adverse in nature, may, within 60 days after notification of such denial, file an appeal to the Freedom of Information Act Appellate Authority, National Reconnaissance Office. Such an appeal shall be in writing addressed to the Chief, Information Access and Release Center, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715, should reference the initial denial, and shall contain the basis for disagreement with the initial denial. The Freedom of Information Act Appellate Authority shall normally make a final determination on an appeal within 20 working days after receipt of the appeal.

§ 296.6 Reading room.

(a) The NRO shall provide a reading room equipped with hard copy and electronic records as required in the ''Electronic Freedom of Information Act Amendments of 1996''. The NRO Reading Room is located at 14675 Lee Road, Chantilly VA, 20151–1715 and is open weekdays only from 8:00 am until

[1] Copies may be obtained via internet at http://web7.whs.osd.mil/corrres/htm.

4:00 p.m. Requestors must call for an appointment twenty-four (24) hours in advance so that optimum customer service can be provided. (703) 808–5029. Fees will be charged for duplication of hard copy records at $.15 per page after the first 100 pages. Softcopy media provided to visitors is assessed as follows:

(1) 5.25″ Floppy diskette $0.50
(2) 3.5″ Floppy diskette $0.50
(3) CD–R Media $3.75
(4) Video Tape $4.00.

(b) The NRO FOIA Electronic Reading Room is located on the NRO Home Page: *www.nro.odci.gov*.

Dated: December 9, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 299

RIN 0790–AG59

National Security Agency/Central Security Service (NSA/CSS) Freedom of Information Act Program

AGENCY: National Security Agency/Central Security Service, Defense.

ACTION: Final rule.

SUMMARY: This rule revises the National Security Agency/Central Security Services (NSA/CSS) regulation governing disclosure of information under the Freedom of Information Reform Act of 1986. As a component of the Department of Defense, the Departmental rules and schedules with respect to the Freedom of Information Reform Act will also be the policy of the NSA/CSS. The effect of the revised rule is to conform to the requirements of the Electronic Freedom of Information Act Amendments of 1996. It also incorporates guidance provided by the Department of Defense on implementation of this amended law.

EFFECTIVE DATE: August 31, 1999.

FOR FURTHER INFORMATION CONTACT: Barbara Paisley, FOIA Office, National Security Agency. (301) 688–6527.

SUPPLEMENTARY INFORMATION: This rule does not constitute a major rule within the meaning of Executive Order 12866. Neither the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), nor the reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (Pub. L. 104–13) apply. It is hereby certified that this proposed rule does not exert a significant economic impact on a significant number of small entities. This determination is made based upon the fact that the rule merely updates the procedural aspects of the NSA/CSS Freedom of Information Act Program, which include guidance on how and from whom to request information pertaining to the NSA/CSS; imposes no new requirements, rights, or benefits on small entities; will have neither a beneficial nor an adverse affect on small entities, and is not a major rule under the Regulatory Flexibility Act.

List of Subjects in 32 CFR Part 299

Freedom of information.

Accordingly, 32 CFR part 299 is revised to read as follows:

PART 299—NATIONAL SECURITY AGENCY/CENTRAL SECURITY SERVICE (NSA/CSS) FREEDOM OF INFORMATION ACT PROGRAM

Sec.
299.1 Purpose.
299.2 Definitions.
299.3 Policy.
299.4 Responsibilities.
299.5 Procedures.
299.6 Fees.
299.7 Exempt records.

Authority: 5 U.S.C. 552.

§ 299.1 Purpose.

(a) This part implements 5 U.S.C. 552, as amended, and DoD 5400.7–R,[1] assigns responsibility for responding to written requests made pursuant to 5 U.S.C. 552; and provides for the review required to determine the appropriateness of classification pursuant to DoD 5200.1–R.[2]

(b) This part applies to all NSA/CSS elements, field activities and personnel, and governs the release or denial of any information under the terms of the Freedom of Information Act (FOIA).

§ 299.2 Definitions.

Terms used in this part, with the exception of the terms in § 299.4, are defined in DoD 5400.7–R. For ease of reference, however, some terms are defined in this section.

(a) FOIA request. (1) A written request for NSA/CSS records, that reasonably describes the records sought, made by any person, including a member of the public (U.S. or foreign citizen/entity), an organization or a business, but not including a Federal Agency or a fugitive from the law that either explicitly or implicitly invokes 5 U.S.C. 552, as amended, DoD 5400.7–R, or NSA/CSS Freedom of Information Act Program, within the National Security Agency/Central Security Service. Requesters should also indicate a willingness to pay fees associated with the processing of their request or, in the alternative, why a waiver of fee may be appropriate.

(2) An FOIA request may be submitted by U.S. mail or its equivalent, by facsimile or electronically through the NSA FOIA Home Page on the World Wide Web (WWW) once the development of a Web-based procedure for submitting FOIA requests is completed. The Web-based system will consist of a form to be completed by the requester, requiring name and postal mailing address. The WWW address is http://www.nsa.gov.8080/docs/efoia/.

(3) When a request meeting the requirements stated in this section is received by the FOIA office and there is no remaining question about fees, that request is considered perfected.

(b) *Privacy Act (PA) request.* A request submitted by a U.S. citizen or an alien admitted for permanent residence for access to records on himself/herself which are contained in a PA system of records and/or seeking an amendment to his/her records. For purposes of this part, PA request refers to a request for copies of records. Regardless of whether the requester cites the FOIA, PA or neither law, the request will be processed under both this part and NSA/CSS Regulation 10–35, Implementation of the Privacy Act of 1974.[3]

(c) *Agency records.* (1) Products of data compilation, such as all books, papers, maps, and photographs, machine readable materials, including those in electronic form or format (including e-mails), or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business and in NSA/CSS's possession and control at the time the FOIA request is made. The term ''records'' does not include:

(i) objects or articles such as structures, furniture, vehicles and equipment, whatever their historical value or value as evidence;

(ii) Intangible records such as an individual's memory or oral communication; and

(iii) Personal records of an individual not subject to agency creation or

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to this section.

[3] Copies may be obtained through a FOIA request to the National Security Agency, Ft. George G. Meade, MD 20755–6000.

retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use.

(2) A record must exist and be in the possession and control of the NSA/CSS at the time of the request to be subject to this part. There is no obligation to create or compile a record or obtain a record not in the possession of the NSA/CSS to satisfy an FOIA request. The NSA/CSS may compile or create a new record when doing so would be less burdensome to the Agency than providing existing records and the requester does not object.

(3) Hard copy or electronic records that are subject to FOIA requests under 5 U.S.C. 552(a)(3) and are available through an established distribution system or the Internet, normally need not be processed under the FOIA. The Agency will provide guidance to the requester on how to obtain the material outside of the FOIA process. If the requester insists that the request be processed under the FOIA, then it shall be so processed.

§ 299.3 Policy.

(a) Pursuant to written requests submitted in accordance with the FOIA, the NSA/CSS will make records available to the public consistent with the Act and the need to protect government interests pursuant to subsection (b) of the Act. Oral requests for information will not be accepted. Before the Agency responds to a request, the request must comply with the provisions of this part.

(b) Requests for electronic records shall be processed, and the records retrieved whenever retrieval can be achieved through reasonable efforts (in terms of both time and manpower) and these efforts would not significantly interfere with the operation of an automated information system. Reasonable efforts shall be undertaken to maintain records in forms of formats that render electronic records readily reproducible.

(c) The NSA/CSS does not originate final orders, opinions, statements of policy, interpretations, staff manuals, or instructions that affect members of the public of the type generally covered by the indexing requirement of 5 U.S.C. 552. Therefore, it has been determined, pursuant to the pertinent statutory and executive order requirements, that it is unnecessary and impracticable to publish an index of the type required by 5 U.S.C. 552. However, should such material be identified, it will be indexed and placed in the library at the Cryptologic History Museum, which serves as the NSA/CSS FOIA reading room, and made available through the Internet. Copies of records which have been released under the FOIA and which NSA/CSS has determined are likely to become the subject of subsequent requests will be placed in the library of the Cryptologic History Museum. In addition, these records will be made available to the public through the Internet. An index of this material will be available in hard copy in the museum library and on the Internet.

§ 299.4 Responsibilities.

(a) The Deputy Director for Corporate Management (DDCM) is responsible for responding to FOIA requests and for collecting fees from FOIA requesters.

(b) The Director of Policy (N5) is the NSA/CSS focal point for responding to FOIA requests. The Deputy Director of Policy (N5P) is the initial denial authority (IDA) and is responsible for:

(1) Receiving and staffing all initial, written requests for the release of information;

(2) Conducting the necessary reviews to determine the releasability of information pursuant to DoD 5200.1–R;

(3) Providing the requester with releasable material;

(4) Notifying the requester of any adverse determination, including informing the requester of his/her right to appeal an adverse determination to the appeal authority (see § 299.5(m));

(5) Assuring the timeliness of responses;

(6) Negotiating with the requester regarding satisfying his request (e.g., time extensions, modifications to the request);

(7) Authorizing extensions of time within Agency components (e.g., time needed to locate and/or review material);

(8) Assisting the Office of General Counsel (OGC) in judicial actions filed under 5 U.S.C. 552;

(9) Maintaining the FOIA reading room and the Internet home page; and

(10) Compiling the annual FOIA report.

(c) The Chief, Finance and Accounting Office (N12) is responsible for:

(1) Sending initial and follow-up bills to FOIA requesters as instructed by the FOIA office, with a copy of all bills going to the FOIA office. In cases where an estimate of fees is provided to the requester prior to the processing of his/her request, no bill will be sent. Although the FOIA office asks FOIA requesters to send payment to the FOIA office, for subsequent forwarding to the Finance and Accounting Office, payment may be received directly in the Finance and Accounting Office. Such payment may be identified by the payee as payment for a Freedom of Information Act request, by the letters ''FOIA,'' or as payment for J9XXX/J10XXXX. (FOIA requests are serialized by a one-up number beginning on October 1 of each year, e.g., J9001, J9002);

(2) Receiving and handling all checks or money orders remitted in payment for FOIA requests, crediting them to the proper account and notifying the FOIA office promptly of all payments received;

(3) Notifying the FOIA office promptly of any payments received directly from requesters even if no bill was initiated by the Finance and Accounting Office; and

(4) Issuing a prompt reimbursement of overpaid fees to the requester upon being notified of such overpayment by the FOIA office.

(d) The Deputy Director, NSA/CSS, is the FOIA Appeal Authority required by 5 U.S.C. 552 for considering appeals of adverse determinations by the Deputy Director of Policy. In the absence of the Deputy Director, the Executive Director, NSA/CSS, serves as the Appeal Authority.

(e) The General Counsel (GC) or his designee is responsible for:

(1) Reviewing responses to FOIA requests to determine the legal sufficiency of actions taken by the Deputy Director of Policy, as required on a case-by-case basis;

(2) Reviewing the appeals of adverse determinations made by the Deputy Director of Policy. The GC will prepare an appropriate reply to such appeals and submit that reply to the NSA/CSS FOIA Appeal Authority for final decision; and

(3) Representing the Agency in all judicial actions relating to 5 U.S.C. 552 and providing support to the Department of Justice.

(f) The Deputy Director for Support Services will establish procedures to ensure that:

(1) All inquiries for information pursuant to 5 U.S.C. 552 are delivered promptly to the Deputy Director of Policy; and

(2) Any appeal of an adverse determination is delivered promptly and directly to the NSA/CSS Appeal Authority staff.

(g) The Key Components and Field Chiefs will:

(1) Establish procedures to ensure that any inquiries for information pursuant to 5 U.S.C. 552 are referred immediately and directly to the Deputy Director of Policy. Field Elements should forward,

electronically, any requests received to the DIRNSA/CHCSS, ATTN: N5P; and

(2) Designate a senior official and an alternate to act as a focal point to assist the Deputy Director of Policy in determining estimated and actual cost data, in conducting searches reasonably calculated to retrieve responsive records and assessing whether information can be released or should be withheld.

(h) Military and civilian personnel assigned or attached to or employed by the NSA/CSS who receive a Freedom of Information Act request shall deliver it immediately to the Deputy Director of Policy. Individuals who are contacted by personnel at other government agencies and asked to assist in reviewing material for release under the FOIA must direct the other agency employee to the NSA/CSS FOIA office promptly.

§ 299.5 Procedures.

(a) Requests for copies of records of the NSA/CSS shall be delivered to the Deputy Director of Policy immediately upon receipt once the request is identified as a Freedom of Information Act or Privacy Act request or appears to be intended as such a request.

(b) The Deputy Director of Policy will endeavor to respond to a direct request to NSA/CSS within 20 working days of receipt. If the request fails to meet the minimum requirements of a perfected FOIA request, the FOIA office will advise the requester of how to perfect the request. The 20 working day time limit applies upon receipt of the perfected request. In the event the Deputy Director of Policy cannot respond within 20 working days due to unusual circumstances, the chief of the FOIA office will advise the requester of the reason for the delay and negotiate a completion date with the requester.

(c) Direct requests to NSA/CSS will be processed in the order in which they are received. Requests referred to NSA/CSS by other government agencies will be placed in the processing queue according to the date the requester's letter was received by the referring agency if that date is known. If it is not known when the referring agency received the request, it will be placed in the queue according to the date of the requester's letter.

(d) The FOIA office will maintain three queues (''simple,'' ''complex'' and ''expedite'') for the processing of records in chronological order. Cases placed in the ''simple'' queue require little time to process. ''Complex'' cases require a substantial amount of review and research prior to making a final release determination. This procedure is followed so that a requester will not be required to wait a long period of time to learn that the Agency has no records responsive to his request or to obtain records that do not require a lengthy review.

(e) Expedited processing shall be granted to a requester if he/she requests such treatment and demonstrates a compelling need for the information. A demonstration of compelling need by a requester shall be made by a statement certified by the requester to be true and correct to the best of his/her knowledge. A compelling need is defined as follows:

(1) The failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.

(2) The information is urgently needed by an individual primarily engaged in disseminating information to inform the public about actual or alleged Federal Government activity. Urgently needed means that the information has a particular value that will be lost if not disseminated quickly.

(3) A request may also be expedited, upon receipt of a statement certified by the requester to be true and correct to the best of his/her knowledge, for the following reasons:

(i) There would be an imminent loss of substantial due process rights.

(ii) There is a humanitarian need for the material. Humanitarian need means that disclosing the information will promote the welfare and interests of mankind.

(4) Requests which meet the criteria for expedited treatment as defined in paragraph (e)(3) of this section will be placed in the expedite queue behind requests which are expedited because of a compelling need (see § 299.5(e)).

(5) A decision on whether to grant expedited treatment will be made within 10 calendar days of receipt. The requester will be notified whether his/her request meets the criteria for expedited processing within that time frame. If a request for expedited processing has been granted, a substantive response will be provided within 20 working days of the date of the decision to expedite. If a substantive response cannot be provided within 20 working days, a response will be provided as soon as practicable and the chief of the FOIA office will negotiate a completion date with the requester, taking into account the number of cases preceding it in the expedite queue and the complexity of the responsive material.

(f) If the Deputy Director of Policy, in consultation with the GC, determines that the fact of the existence or non-existence of requested material is a matter that is exempt from disclosure, the requester will be so advised.

(g) If the FOIA office determines that NSA/CSS may have information of the type requested, the office shall contact each Key Component reasonably expected to hold responsive records.

(h) The FOIA office will assign the requester to the appropriate fee category under 5 U.S.C. 552, as amended, DoD 5400.7–R, and NSA/CSS Freedom of Information Act Program, and, if a requester seeks a waiver of fees, the FOIA office will, after determining the applicable fee category, determine whether to waive fees pursuant to DoD 5400.7–R. (See also § 299.6.) If fees are to be assessed in accordance with the provisions of 5 U.S.C. 552 and DoD 5400.7–R, the Key Component will prepare an estimate of the cost required to locate, retrieve and, in the case of commercial requesters, review the records. Cost estimates will include only direct search, duplication costs and review time (for commercial requesters) as defined in DoD 5400.7–R.

(1) If the cost estimate does not exceed $25.00, the component shall search for and forward to the FOIA office the documents responsive to the request. Fees $15.00 and under will be waived.

(2) If the costs are estimated to exceed $25.00, the component shall provide an estimate to the FOIA office without conducting the search. The chief of the FOIA office will advise the requester of the costs to determine a willingness to pay the fees. A requester's willingness to pay fees will be satisfactory when the estimated fee does not exceed $250.00 and the requester has a history of prompt payment. A history of prompt payment means payment within 30 calendar days of the date of billing. If fees are expected to exceed $250.00, the requester will be required to submit payment before processing is continued if the requester does not have a history of prompt payment. All payments will be made by certified check or money order made payable to the Treasurer of the United States.

(3) When a requester has previously failed to pay a fee charged within a timely fashion (i.e., within 30 calendar days from the date of billing) payment is required before a search is initiated or before review is begun. When a requester has no payment history, an advance payment may be required of the requester after the case has been completed, but prior to providing the final response.

(4) If a requester has failed to pay fees after three bills have been sent, additional requests from that requester

and/or the organization or company he/she represents will not be honored until all costs and interest are paid.

(i) Upon receipt of a statement of willingness to pay assessable fees or the payment from the requester, the FOIA office shall notify the NSA/CSS component to search for the appropriate documents.

(1) The component conducting the search will advise the FOIA office of the types of files searched (e.g., electronic records/e-mail, video/audio tapes, paper), the means by which the search was conducted (e.g., subject or chronological files, files retrievable by name or personal identifier) and any key words used in an electronic search.

(2) If the search does not locate the requested records, the Deputy Director of Policy shall so advise the requester and offer appeal rights.

(3) If the search locates the requested records, the holding organization will furnish copies of these records immediately to the FOIA office. The Deputy Director of Policy will make a determination as to the releasability of the records in consultation with the GC, the Legislative Affairs Office (if any information relates to members of Congress or their staffs) and other Agency components, as appropriate. This determination shall also state, with particularity, that a search reasonably calculated to locate responsive records was conducted and that all reasonably segregable, non-exempt information was released. The located records will be handled as follows:

(i) All exempt records or portions thereof will be withheld and the requester so advised along with the statutory basis for the denial; the volume of material being denied, unless advising of the volume would harm an interest protected by exemption (see 5 U.S.C. 552); and the procedure for filing an appeal of the denial.

(ii) All segregable, non-exempt records or portions thereof will be forwarded promptly to the requester.

(j) Records or portions thereof originated by other agencies or information of primary interest to other agencies found in NSA/CSS records will be handled as follows:

(1) The originating agency's FOIA Authority will be provided with a copy of the request and the stated records.

(2) The requester will be advised of the referral, except when notification would reveal exempt information.

(k) Records of portions thereof originated by a commercial or business submitter and containing information that is arguably confidential commercial or financial information as defined in Executive Order 12600 (52 FR 23781, 3 CFR, 1988 Comp., p. 235) will be handled as follows:

(1) The commercial or business submitter will be provided with a copy of the records as NSA/CSS proposes to release them, and the submitter will be given an opportunity to inform the FOIA office about its objections to disclosure in writing.

(2) The Deputy Director of Policy or his/her designee shall review the submitter's objections to disclosure and, if N5P decides to release records or portions thereof to the requester, provide the submitter with an opportunity to enjoin the release of such information.

(l) Records may be located responsive to an FOIA request which contain portions not responsive to the subject of the request. The non-responsive portions will be processed as follows:

(1) If the information is easily identified as releasable, the non-responsive portions will be provided to the requester.

(2) If additional review or coordination with other NSA/CSS elements or other government agencies or entities is required to determine the releasability of the information, and the processing of the material would be facilitated by excluding those portions from review, the requester should be consulted regarding the need to process those portions. If the requester states that he is interested in the document in its entirety, including those portions not responsive to the subject of his request, the entire document will be considered responsive and reviewed accordingly.

(3) If the conditions as stated in paragraph (l)(2) of this section pertain, but it is not a simple matter to contact and/or reach an agreement with the requester, the non-responsive portions will be whited-out or otherwise marked to differentiate the removal of non-responsive material from the removal of exempt portions. The requester shall be advised that portions were removed as non-responsive. In addition, he/she shall be given an indication of the manner in which those portions would be treated if responsive (e.g., the information would be protected by exemptions, would require extensive review/consultation). Such a response is not considered an adverse determination. If the requester informs the FOIA office of his interest in receiving the ''whited-out'' portions, the request will be placed in the same location within the processing queue as the original request and those portions of the documents will be processed.

(4) If the requester states in his initial request that he/she wants all non-responsive portions contained within documents containing responsive information, then the documents will be processed in their entirety.

(m) Any person advised of an adverse determination will be notified of the right to submit an appeal which must be postmarked within 60 days of the date of the response letter and that the appeal must be addressed to the NSA/CSS Appeal Authority, National Security Agency, Ft. George G. Meade, MD 20755–6000. The following actions are considered adverse determinations:

(1) Denial of records or portions of records;

(2) Inability of NSA/CSS to locate records;

(3) Denial of a request for the waiver or reduction of fees;

(4) Placement of requester in a specific fee category;

(5) Amount of estimates of processing costs;

(6) Denial of a requester for expeditious treatment; and

(7) Non-agreement regarding completion date of request.

(n) The GC or his designee will process appeals and make a recommendation to the Appeal Authority.

(1) Upon receipt of an appeal regarding the denial of information or the inability of the Agency to locate records, the GC or his designee shall review the record and determine whether the denial was proper and/or whether an adequate search was conducted for responsive material, and make other determinations and recommendations as appropriate.

(2) If the GC or his/her designee determines that additional information may be released, the information shall be made available to the requester within 20 working days from receipt of the appeal. The conditions for responding to an appeal for which expedited treatment is sought by the requester are the same as those for expedited treatment on the initial processing of a request. (See paragraph (e) of this section.)

(3) If the GC or his/her designee determines that the denial was proper, the requester must be advised within 20 days after receipt of the appeal that the appeal is denied. The requester likewise shall be advised of the basis for the denial and the provisions for judicial review of the Agency's appellate determination.

(4) If a new search for records is conducted and produces additional material, the additional records will be forwarded to the Deputy Director of Policy, as the IDA, for review. Following his/her review, the Deputy Director of Policy will return the material to the GC

with his/her recommendation for release or withholding. The GC will review the material on behalf of the Appeal Authority, and the Appeal Authority will make the release determination. Upon denial or release of additional information, the Appeal Authority will advise the requester that more material was located and that the IDA and the Appeal Authority each conducted an independent review of the documents. In the case of denial, the requester will be advised of the basis of the denial and the right to seek judicial review of the Agency's action.

(5) When a requester appeals the absence of a response to a request within the statutory time limits, the GC shall process the absence of a response as it would denial of access to records. The Appeal Authority will advise the requester of the right to seek judicial review.

(6) Appeals will be processed using the same multi-track system as initial requests. If an appeal cannot be responded to within 20 working days, the requirement to obtain an extension from the requester is the same as with initial requests. The time to respond to an appeal, however, may be extended by the number of working days (not to exceed 10) that were not used as additional time for responding to the initial request. That is, if the initial request is processed within 20 working days so that the extra 10 days of processing which an agency can negotiate with the requester are not used, the response to the appeal may be delayed for that 10 days (or any unused portion of the 10 days).

§ 299.6 Fees.

(a) Upon receipt of a request, N5P shall evaluate the request to determine the fee category or status of the requester, as well as the appropriateness of a waiver or reduction of fees if requested. There are no fees associated with a Privacy Act request, except as stated in NSA/CSS Regulation 10–35, Implementation of the Privacy Act of 1974. If fees are assessable, a search cost estimate will be sent to the Key Component(s) expected to maintain responsive records. If N5P assigns a fee category to a requester which differs from that claimed by the requester or determines that a waiver or reduction of fees is not appropriate, N5P shall notify the requester of this discrepancy and of the estimated cost of processing the request. The requester will be given 30 days to provide additional substantiation for the fee status claimed or for a fee waiver or reduction. The requester will be advised that his/her request will not be processed until the discrepancy over the fee category, fee waiver or reduction, or both are resolved. He/she will also be advised of his/her right to appeal N5P's determination. A fee waiver or reduction will be granted or denied in accordance with DoD 5400.7–R and based on information provided by the requester. If the requester does not respond to N5P's initial notification of the discrepancy in fee assessment within the 30 days, N5P's determination about that requester's fee status shall be final.

(b) Fees will reflect only direct search, review (in the case of commercial requesters) and duplication costs, recovery of which are permitted by 5 U.S.C. 552. Fees shall not be used to discourage requesters.

(c) No minimum fee may be charged.

(d) Fees will be based on estimates provided by appropriate organizational focal points. Upon completion of the processing of the request and computation of all assessable fees, the request will be handled as follows:

(1) If the actual costs exceed the estimated costs, the requester will be notified of the remaining fees due. Upon the requester's agreement to pay the amount in excess, non-exempt information will be provided to the requester and additional fees will be collected. If the requester refuses to pay the amount in excess, processing of the request will be terminated with notice to the requester.

(2) If the actual costs are less than estimated fees which have been collected from the requester, the non-exempt information will be released and the FOIA office will advise Finance and Accounting Office of the need to refund funds to the requester.

(e) Fees for manual searches, review time and personnel costs associated with computer searches will be computed according to the following schedule:

Type	Grade	Hourly rate
(1) Clerical	E9/GS8 and below	$12
(2) Professional.	O1–O6/GS9–GS15	25
(3) Executive	O7/SCE/SLE/SLP	45

(f) Fees for machine time involved in computer searches shall be based on the direct cost of retrieving information from the computer, including associated input/output costs.

(g) Search costs for audiovisual documentary material will be computed as for any other record. Duplication costs will be the actual, direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

(h) Duplication fees will be assessed according to the following schedule:

Type	Cost per page
(1) Office Copy	$.15
(2) Microfiche	.25
(3) Printed Material	.02

§ 299.7 Exempt records.

(a) Records meeting the exemption criteria of 5 U.S.C. 552 need not be published in the **Federal Register,** made available in a reading room, or provided in response to requests made under 5 U.S.C. 552.

(b) The following nine FOIA exemptions may be used by the NSA/CSS to withhold information in whole or in part from public disclosure when disclosure would cause foreseeable harm to an interest protected by the exemption. Discretionary releases will be made whenever possible.

(1) Records specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and which are in fact properly classified pursuant to such Executive Order.

(2) Records relating solely to the internal personnel rules and practices of an agency.

(3) Records which concern matters that a statute specifically exempts from disclosure, so long as the statutory exemptions permit no discretion on what matters are exempt; or matters which meet criteria established for withholding by the statute, or which are particularly referred to by the statute as being matters to be withheld. Examples of such statutes are:

(i) The National Security Agency Act of 1959 (Public Law 86–36 Section 6);

(ii) 18 U.S.C. 798;

(iii) 50 U.S.C. 403–3(c)(6);

(iv) 10 U.S.C. 130; and

(v) 10 U.S.C. 2305(g).

(4) Records containing trade secrets and commercial or financial information obtained from a person and privileged or confidential.

(5) Interagency or intra-agency memoranda or letters that would not be available by law to a party other than an agency in litigation with the agency.

(6) Personnel and medical files and similar files, the disclosure of which, would constitute a clearly unwarranted invasion of personal privacy.

(7) Investigatory records compiled for law enforcement purposes, but only to

the extent that the production of such records:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of the right to a fair trial or to an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a source within NSA/CSS, state, local, or foreign agency or authority, or any private institution which furnishes the information on a confidential basis, or could disclose information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; and

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Records contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

(9) Geological and geophysical information and data, including maps, concerning wells.

(c) Information which has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of reasons cited in this section, shall be considered as being ''For Official Use Only (FOUO). No other material shall be considered or marked FOUO.

Dated: December 9, 1999.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer Department of Defense.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 012–FIP; FRL–6511–3]

RIN 2060–AI54

Revision to Promulgation of Federal Implementation Plan for Arizona—Maricopa Nonattainment Area; PM–10

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the authority of section 110(c)(1) of the Clean Air Act (CAA or ''the Act''), EPA is finalizing proposed amendments to the moderate area federal implementation plan (FIP) for the Phoenix PM–10 nonattainment area. These amendments modify the fugitive dust rule to add or replace certain test methods and allow alternative control measures (ACMs) to be implemented without prior EPA approval. For the convenience of readers, the entire FIP rule is reprinted in this publication.

DATES: This action is effective on January 20, 2000.

ADDRESSES: A copy of docket No. A–98–42 containing material relevant to this final action, including EPA's responses to comments received on the proposed amendments, is available for review at: EPA Region 9, Air Division, 75 Hawthorne Street, San Francisco, CA 94105. Interested persons may make an appointment with Eleanor Kaplan (415) 744–1159 to inspect the docket at EPA's San Francisco office on weekdays between 9 a.m. and 4 p.m.

A copy of the docket No. A–98–42 is also available to review at the Arizona Department of Environmental Quality, Library, 3033 N. Central Avenue, Phoenix, Arizona 85012. (602) 207–2217.

Electronic Availability: This document is also available as an electronic file on EPA's Region 9 Air Web Page at http://www.epa.gov/region09/air.

FOR FURTHER INFORMATION CONTACT: Karen Irwin (415) 744–1903.

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I. Background

On August 3, 1998 (63 FR 41326), EPA finalized a FIP for the Phoenix PM–10 nonattainment area (the ''final FIP''). Readers should refer to 63 FR 41326 for details of the history and contents of the final FIP.

The final FIP includes a fugitive dust rule to control PM–10 emissions from vacant lots, unpaved parking lots and unpaved roads codified at 40 CFR 52.128 (63 FR 41326, 41350), hereafter referred to as ''the final FIP rule''.[1] EPA subsequently proposed specific revisions related to the test methods, ACMs, and unpaved road requirements of the final FIP rule (64 FR 3263, January 21, 1999). EPA accepted comments on the proposed amendments through March 8, 1999. EPA is now finalizing action on all but one of the proposed amendments and re-publishing the final FIP fugitive dust rule in its entirety.

A detailed discussion of the FIP rule revisions proposed by EPA can be found in 64 FR 3263, January 1999. EPA proposed to add a silt content test method for unpaved roads and unpaved parking lots, add a new visible crust test method or replace the visible crust test method for vacant lots, add a procedure for measuring the density of standing vegetation to the standing vegetation test method, include coverage of privately owned unpaved roads that are privately maintained or not maintained,[2] and allow ACMs to be implemented without prior EPA approval.

[1] EPA promulgated the final FIP rule as part of its court-ordered obligation to provide for the implementation of Reasonably Available Control Measures (RACM) (required by section 189(a)(1)(C) of the Clean Air Act) in the Phoenix PM–10 nonattainment area.

[2] Note: the FIP rule as finalized in August 1998 includes coverage of privately owned unpaved roads that are publicly maintained; EPA's proposal in January 1999 to include privately owned roads that are privately maintained or not maintained has no bearing on existing FIP rule coverage of privately owned, publicly maintained unpaved roads.

II. Summary of Final Action on Proposed Revisions

A. Test Methods

1. Silt Content Test Method

The final FIP rule contains an opacity standard of twenty (20) percent, or Ringlemann 1, for unpaved roads and unpaved parking lots. Compliance with this standard is to be tested using visible emissions test methods included in the final Phoenix FIP rule.[3] EPA proposed an additional, new test method for measuring silt content.[4]

EPA solicited comments on this additional test method and whether or not to retain the existing opacity test method in the final FIP rule. EPA received no comments suggesting that the existing opacity test method be eliminated from the FIP rule. In this final action, EPA has added the silt content test method into the FIP rule and retained the opacity test method. Therefore, sources subject to the FIP rule will need to comply with both a silt content standard and an opacity standard.

Also, EPA received public comments suggesting that silt loading be taken into account. In this final action, EPA has included a silt loading value in the silt content test method, below which a source may be deemed in compliance with the FIP rule. Text changes to accommodate this addition occur in paragraph (b)(16) and in Appendix A, I.B of the final amendments.

Furthermore, EPA has clarified the following items from the proposed test method text:

- Samples should be collected to a depth of approximately 1 centimeter or until a hard subsurface is reached, whichever occurs first.
- If sieving is simplified by combining three samples, each sample should weigh within one ounce of the other two samples. (EPA's contractor clarified that samples must be of approximately the same weight in order to ensure technical accuracy if they are combined.)[5]

EPA has corrected the following two items from the proposed test method text:

- An incorrect reference to collector pan material as silt fraction has been eliminated.
- A printing error in the AP–42 silt content test method with respect to the method's equation to calculate percent silt content.

2. Visible Crust Test Method

The final FIP rule's test method for measuring visible crust thickness on vacant lots involved breaking off a piece of crust, checking whether the crust crumbles easily and measuring its thickness with a ruler.[6] EPA proposed an alternative method to determine the sufficiency of a visible crust.[7] The alternative test method involves dropping a small steel ball from a height of one foot in select one square foot areas and checking to see whether the ball penetrates the surface or causes loose grains to appear. Public comments received support the alternative method. In this final action, EPA has replaced the earlier visible crust thickness test method with the alternative visible crust test method. This required renumbering of the proposed text[8] for consistency with the numbering of other vacant lot test methods. Also, EPA has modified the text to allow the weight of the ball used in the test method to range from 16 to 17 grams, as opposed to an exact weight of 16.33 grams.

3. Standing Vegetation Test Method Density Procedure

The final FIP rule contains a test method for standing vegetation.[9] EPA proposed to add a vegetation density procedure involving the use of a grid with one inch or half-inch squares to help ensure that various vegetative structures can be assessed accurately and consistently.[10] Public comments received support the inclusion of the vegetation density procedure in the standing vegetation test method. In this final action, EPA has added the density procedure into the final FIP rule. EPA also made two minor text corrections to the proposed test method which are enumerated in the Technical Support Document associated with this action, which can be found in Docket No. A–98–42.

B. Alternative Control Measures

In the final FIP rule (August 1998), ACMs are allowed provided that they are submitted to EPA and receive EPA approval.[11] ACMs are any RACM not specifically listed in the rule that can meet the rule's stabilization standards for each source category.[12] EPA proposed to amend the final FIP rule such that ACMs would not require prior EPA approval.[13] In today's action, EPA has accordingly eliminated the final FIP rule requirement that ACMs receive prior EPA approval.

III. Unpaved Roads

The final FIP rule contains requirements to control fugitive dust from unpaved roads that are publicly owned and/or operated (*i.e.*, maintained). This includes privately owned roads that are publicly maintained. EPA proposed to include in the FIP rule unpaved privately owned roads that are privately maintained or not maintained. EPA is not taking final action at this time on the proposed amendments to the unpaved road requirements of the final FIP rule. The Maricopa Association of Governments (MAG) recently announced its intent to pave or otherwise control all unpaved roads located in the PM–10 nonattainment area with traffic levels that meet or exceed 130 average daily trips.[14] EPA believes that the County's action may supersede the need for EPA to control additional unpaved roads as specified in the proposed FIP revision, and thus is not taking action on the proposed revision at this time.

IV. Agency Responses to Comments

A 45-day public comment period was provided in 64 FR 3263. EPA received several comments on the proposed FIP rule revisions and responds to the most significant below. EPA has responded to all comments associated with this final action in the Technical Support Document, which can be found in Docket No. A–98–42.

Comment: Maricopa County Environmental Services Division (MCESD) comments that by itself, the silt content of the surface material on an unpaved road is a unidimensional parameter and does not indicate whether or not the road is stabilized. It is the silt loading value which provides an indicator of stabilization as it estimates the amount of fine particulate per surface area which may become airborne. The proposed test method should be modified to derive silt loading in place of silt content.

[3] Reference Method 9 (40 CFR part 60, appendix A) and Methods 203A and 203C. Appendix A.I. to § 52.128 (63 FR 41326, 41353–41355).

[4] 64 FR 3263, 3267–3268.

[5] Chatten Cowherd, MRI Research Institute in Kansas City, Missouri, January 1999.

[6] 63 FR 41324, 41355.

[7] 64 FR 3263, 3268–3269.

[8] 63 FR 3263, 3268.

[9] 63 FR 41326, 41356.

[10] 64 FR 3263, 3269–3271. The procedure was provided to EPA by Larry Hagen, Agricultural Engineer, United States Department of Agriculture, Wind Erosion Research Unit, 2004 Throckmortion Hall, Kansas State University, Manhatten, Kansas 66506.

[11] 63 FR 41326, 41352.

[12] The ACM provisions of the rule do not otherwise authorize any modification of the FIP rule's requirements.

[13] 64 FR 3263, 3267.

[14] Memorandum from Lindy Bauer, MAG, to Members of the MAG Air Quality Planning Team, November 30, 1999, summarizing the MAG Transportation Review Committee's funding recommendations presented on November 23, 1999.

Response: EPA has modified the test method to include a silt loading parameter, such that surfaces with less than 0.33 oz/ft.^{3} silt loading will be considered stable under the FIP rule. However, EPA has retained the silt content standards of 6 percent for unpaved roads and 8 percent for unpaved parking lots when silt loading is greater than or equal to 0.33 oz/ft^2

Comment: MCESD, Maricopa County Department of Transportation (MCDOT) and Arizona Department of Environmental Quality (ADEQ) comment on the benefits associated with retaining the opacity test method in the FIP rule while adding a silt content test method. With respect to visible crust test methods, however, MCESD and ADEQ comment that EPA should replace (*i.e.*, not retain) the visible crust test currently found in the FIP rule with the proposed ''drop ball'' visible crust test. Arizona Center for Law in the Public Interest (ACLPI) comments that they support the use of the most accurate test methods available, however, test methods should not be replaced where the superiority of the replacement tests has not been established; requiring both existing and proposed tests, at least for a certain time period, would not be unduly cumbersome or expensive to the regulated community, and this would also allow EPA to compare the relative value and accuracy of the two sets of tests.

Response: EPA has retained the opacity standard in the FIP rule, while adding a new test method for measuring silt content. Retaining both the opacity and silt content standards and test methods in the final FIP rule will provide greater flexibility for qualified persons to conduct compliance testing of fugitive dust sources and will allow opportunities to compare the relative value and accuracy of the two tests.

With respect to visible crust test methods, EPA has replaced the former visible crust test with the proposed ''drop ball'' visible crust test. EPA conducted field testing of both the visible crust test method in the final FIP rule and the proposed ''drop ball'' visible crust test method. Field testing showed that the proposed ''drop ball'' test method is easier to conduct, more accurately repeatable by various parties, and more indicative of whether a sufficiently stabilizing crust exists. To ensure the use of a superior method, EPA is replacing the test method in the final FIP rule with the ''drop ball'' test method. (Interested parties should note that the test method for threshold friction velocity promulgated in the final FIP rule can also be used to determine source compliance where some visible crusting is present.)

Comment: ADEQ comments that adding the vegetative density procedure to the current test method would clarify the method and produce more accurate results when performed by different individuals.

Response: EPA has added the vegetative density procedure to the standing vegetation test method.

Comment: ADEQ comments that they support eliminating the requirement to submit ACMs to EPA because implementation costs will decrease since parties will not need to commit time and resources to submit ACMs to EPA and wait for approval before utilizing them. ACLIPI, however, comments that they strongly object to the implementation of ACMs without EPA approval because without such approval, ACMs will inevitably become ''least effective control measures''.

Response: EPA has eliminated the requirement to submit ACMs to EPA for approval. Since the FIP rule contains standards and test methods which indicate whether a surface is stabilized, owners/operators can be allowed flexibility as to the type of control measure applied as long as the control measure results in a stabilized surface. The elimination of the requirement to submit ACMs for prior EPA approval does not lessen the owners'/operators' responsibility to implement control measures effectively on the sources subject to the rule. In fact, by emphasizing the intended result, as opposed to the type of control, EPA hopes to increase owners'/operators' understanding that their responsibility under the FIP rule will remain until a source is controlled, even if the owner/operator inadequately implements a control measure or implements an ineffective control measure. If applied, ACMs must meet the minimum standards established by the FIP rule, therefore, requiring that ACMs be submitted to EPA for approval would result in unnecessary administrative burden.

V. Text Corrections to the Final Rule

In addition to finalizing the proposed rule amendments, EPA is incorporating a few minor corrections to final FIP rule text at 40 CFR 52.128. These are enumerated in the Technical Support Document associated with this action, which can be found in Docket No. A–98–42.

VI. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Due to potential novel policy issues this action is considered a significant regulatory action and therefore must be reviewed by OMB. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal

governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The revisions finalized in this rulemaking concern test methods and flexibility for alternative compliance. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Analysis

1. Regulatory Flexibility Act Requirements

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

For the purposes of this inquiry, as it applies to the proposed amendments to the federal fugitive dust rule (40 CFR § 52.128), EPA is assuming that the affected or potentially affected sources constitute ''small entities'' as defined by the RFA.

A detailed discussion of the RFA analysis for the final FIP is found in section V.B. at 63 FR 41326. In general, the finalized amendments to the final FIP fugitive dust rule are intended to provide more flexibility in complying with the FIP rule and to improve the test methods as they currently exist in the rule. Thus, EPA believes that the amendments will not change the final FIP RFA analysis, except possibly to have a lesser impact on small entities.

2. RFA Analysis

a. Finalized Amendments to Federal Rule for Unpaved Roads, Unpaved Parking Lots and Vacant Lots

EPA believes that the finalized test method amendments will provide either more flexibility or an improved procedure for determining compliance with the FIP fugitive dust rule. The silt content test method will allow persons who are not certified in visible emissions training to test the stability of an unpaved road or unpaved parking lot by using an alternative method to the opacity test method. EPA plans to ensure that the necessary sieve units are available for loan by local entities to regulated sources. Also, the newly added visible crust test method accomplishes the same objective as the previous visible crust test method yet is more practical and can be accurately repeated by various parties. The additional procedure to assist parties in measuring frontal silhouette area of various vegetative structures is merely intended to address circumstances that may arise in the field which are not addressed in the final FIP rule. Finally, eliminating the requirement for EPA approval of ACMs increases the rule's flexibility for source owners/operators and reduces the paperwork burden of the rule.

b. Certification

For reasons discussed above, EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule amendments. After consideration of the economic impacts of today's final rule amendments on small entities, I hereby certify that the final rule will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates Reform Act (UMRA)

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that

may be significantly or uniquely impacted by the rule.

A detailed discussion of the UMRA requirements and how they are addressed can be found in section V.C. of the final FIP rulemaking (63 FR 41326). As explained above, today's finalized amendments to the final FIP fugitive dust rule are intended to provide more flexibility in complying with the FIP rule and to improve the test methods currently in the rule. Thus, EPA believes that the amendments will not change the final FIP UMRA analysis, except possibly to have a lesser impact on most regulated entities.

G. Paperwork Reduction Act

The finalized test method and ACM amendments do not impact the information collection request analysis for the final FIP (EPA ICR 1855.02). The final FIP (63 FR 41326) provides more information on the information collection request requirements.

H. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, Sec. 12(d) (15 U.S.C. 272 note) 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 directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

In this action, EPA has incorporated voluntary consensus standards where feasible [See language for Appendix A to § 52.128, I.B(iv)]. However, in most cases there are no applicable technical standards or field procedures specifically designed for the source categories at hand. OMB has reviewed and concurred on the applicable technical standards finalized in this revision.

I. 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 a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

J. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 22, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter.

Dated: December 13, 1999.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

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

Subpart D—Arizona

2. Section 52.128 is revised as follows:

§ 52.128 Rule for unpaved parking lots, unpaved roads and vacant lots.

(a) *General.* (1) *Purpose.* The purpose of this section is to limit the emissions of particulate matter into the ambient air from human activity on unpaved parking lots, unpaved roads and vacant lots.

(2) *Applicability.* The provisions of this section shall apply to owners/operators of unpaved roads, unpaved parking lots and vacant lots and responsible parties for weed abatement on vacant lots in the Phoenix PM–10 nonattainment area. This section does not apply to unpaved roads, unpaved parking lots or vacant lots located on an industrial facility, construction, or earth-moving site that has an approved permit issued by Maricopa County Environmental Services Division under Rule 200, Section 305, Rule 210 or Rule 220 containing a Dust Control Plan approved under Rule 310 covering all unpaved parking lots, unpaved roads and vacant lots. This section does not apply to the two Indian Reservations (the Salt River Pima-Maricopa Indian Community and the Fort McDowell Mojave-Apache Indian Community) and a portion of a third reservation (the Gila River Indian Community) in the Phoenix PM–10 nonattainment area. Nothing in this definition shall preclude applicability of this section to vacant lots with disturbed surface areas due to construction, earth-moving, weed abatement or other dust generating operations which have been terminated for over eight months.

(3) The test methods described in Appendix A of this section shall be used when testing is necessary to determine whether a surface has been stabilized as defined in paragraph (b)(16) of this section.

(b) *Definitions.* (1) *Average daily trips (ADT)*—The average number of vehicles that cross a given surface during a specified 24-hour time period as determined by the Institute of Transportation Engineers Trip Generation Report (6th edition, 1997) or tube counts.

(2) *Chemical/organic stabilizer*—Any non-toxic chemical or organic dust suppressant other than water which meets any specifications, criteria, or tests required by any federal, state, or local water agency and is not prohibited for use by any applicable law, rule or regulation.

(3) *Disturbed surface area*—Any portion of the earth's surface, or materials placed thereon, which has been physically moved, uncovered, destabilized, or otherwise modified from its undisturbed natural condition, thereby increasing the potential for emission of fugitive dust.

(4) *Dust suppressants*—Water, hygroscopic materials, solution of water and chemical surfactant, foam, or non-toxic chemical/organic stabilizers not prohibited for use by any applicable law, rule or regulation, as a treatment material to reduce fugitive dust emissions.

(5) *EPA*—United States Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105.

(6) *Fugitive dust*—The particulate matter entrained in the ambient air which is caused from man-made and natural activities such as, but not limited to, movement of soil, vehicles, equipment, blasting, and wind. This excludes particulate matter emitted directly from the exhaust of motor vehicles and other internal combustion engines, from portable brazing, soldering, or welding equipment, and from piledrivers.

(7) *Lot*—A parcel of land identified on a final or parcel map recorded in the office of the Maricopa County recorder with a separate and distinct number or letter.

(8) *Low use unpaved parking lot*—A lot on which vehicles are parked no more than thirty-five (35) days a year, excluding days where the exemption in paragraph (c)(2) of this section applies.

(9) *Motor vehicle*—A self-propelled vehicle for use on the public roads and highways of the State of Arizona and required to be registered under the Arizona State Uniform Motor Vehicle Act, including any non-motorized attachments, such as, but not limited to, trailers or other conveyances which are connected to or propelled by the actual motorized portion of the vehicle.

(10) *Off-road motor vehicle*—any wheeled vehicle which is used off paved roadways and includes but is not limited to the following:

(i) Any motor cycle or motor-driven cycle;

(ii) Any motor vehicle commonly referred to as a sand buggy, dune buggy, or all terrain vehicle.

(11) *Owner/operator*—any person who owns, leases, operates, controls, maintains or supervises a fugitive dust source subject to the requirements of this section.

(12) *Paving*—Applying asphalt, recycled asphalt, concrete, or asphaltic concrete to a roadway surface.

(13) *Phoenix PM–10 nonattainment area*—such area as defined in 40 CFR 81.303, excluding Apache Junction.

(14) *PM–10*—Particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by reference or equivalent methods that meet the requirements specified for PM–10 in 40 CFR part 50, Appendix J.

(15) *Reasonably available control measures (RACM)*—Techniques used to prevent the emission and/or airborne transport of fugitive dust and dirt.

(16) *Stabilized surface*—(i) Any unpaved road or unpaved parking lot surface where:

(A) Any fugitive dust plume emanating from vehicular movement does not exceed 20 percent opacity as determined in section I.A of Appendix A of this section; and

(B) Silt loading (weight of silt per unit area) is less than 0.33 ounces per square foot as determined by the test method in section I.B of Appendix A of this section OR where silt loading is greater than or equal to 0.33 ounces per square foot and silt content does not exceed six (6) percent for unpaved road surfaces or eight (8) percent for unpaved parking lot surfaces as determined by the test method in section I.B of Appendix A of this section.

(ii) Any vacant lot surface with:

(A) A visible crust which is sufficient as determined in section II.1 of Appendix A of this section;

(B) A threshold friction velocity (TFV), corrected for non-erodible elements, of 100 cm/second or higher as determined in section II.2 of Appendix A of this section;

(C) Flat vegetation cover equal to at least 50 percent as determined in section II.3 of Appendix A of this section;

(D) Standing vegetation cover equal to or greater than 30 percent as determined in section II.4 of Appendix A of this section; or

(E) Standing vegetation cover equal to or greater than 10 percent as determined in section II.4 of Appendix A of this section where threshold friction velocity, corrected for non-erodible elements, as determined in section II.2 of Appendix A of this section is equal to or greater than 43 cm/second.

(17) *Unpaved parking lot*—A privately or publicly owned or operated area utilized for parking vehicles that is not paved and is not a Low use unpaved parking lot.

(18) *Unpaved road*—Any road, equipment path or driveway used by motor vehicles or off-road motor vehicles that is not paved which is open to public access and owned/operated by any federal, state, county, municipal or other governmental or quasi-governmental agencies.

(19) *Urban or suburban open area*—An unsubdivided or undeveloped tract of land adjoining a residential, industrial or commercial area, located on public or private property.

(20) *Vacant lot*—A subdivided residential, industrial, institutional, governmental or commercial lot which contains no approved or permitted buildings or structures of a temporary or permanent nature.

(c) *Exemptions.* The following requirements in paragraph (d) of this section do not apply:

(1) In paragraphs (d)(1), (d)(2) and (d)(4)(iii) of this section: Any unpaved parking lot or vacant lot 5,000 square feet or less.

(2) In paragraphs (d)(1) and (d)(2) of this section: Any unpaved parking lot on any day in which ten (10) or fewer vehicles enter.

(3) In paragraphs (d)(4)(i) and (d)(4)(ii) of this section: Any vacant lot with less than 0.50 acre (21,780 square feet) of disturbed surface area(s).

(4) In paragraph (d) of this section: Non-routine or emergency maintenance of flood control channels and water retention basins.

(5) In paragraph (d) of this section: Vehicle test and development facilities and operations when dust is required to test and validate design integrity, product quality and/or commercial acceptance. Such facilities and operations shall be exempted from the provisions of this section only if such testing is not feasible within enclosed facilities.

(6) In paragraph (d)(4)(i) of this section: Weed abatement operations performed on any vacant lot or property under the order of a governing agency for the control of a potential fire hazard or otherwise unhealthy condition provided that mowing, cutting, or another similar process is used to maintain weed stubble at least three (3) inches above the soil surface. This includes the application of herbicides provided that the clean-up of any debris does not disturb the soil surface.

(7) In paragraph (d)(4)(i) of this section: Weed abatement operations that receive an approved Earth Moving permit under Maricopa County Rule 200, Section 305 (adopted 11/15/93).

(d) *Requirements.* (1) *Unpaved parking lots.* Any owners/operators of an unpaved parking lot shall implement one of the following RACM on any surface area(s) of the lot on which vehicles enter and park.

(i) Pave; or

(ii) Apply chemical/organic stabilizers in sufficient concentration and frequency to maintain a stabilized surface; or

(iii) Apply and maintain surface gravel uniformly such that the surface is stabilized; or

(iv) Apply and maintain an alternative control measure such that the surface is stabilized, provided that the alternative measure is not prohibited under paragraph (b)(2) or (b)(4) of this section.

(2) Any owners/operators of a low use unpaved parking lot as defined in paragraph (b)(8) of this section shall implement one of the RACM under paragraph (d)(1) of this section on any day(s) in which over 100 vehicles enter the lot, such that the surface area(s) on which vehicles enter and park is/are

stabilized throughout the duration of time that vehicles are parked.

(3) *Unpaved roads.* Any owners/operators of existing unpaved roads with ADT volumes of 250 vehicles or greater shall implement one of the following RACM along the entire surface of the road or road segment that is located within the Phoenix non-attainment area by June 10, 2000:

(i) Pave; or

(ii) Apply chemical/organic stabilizers in sufficient concentration and frequency to maintain a stabilized surface; or

(iii) Apply and maintain surface gravel uniformly such that the surface is stabilized; or

(iv) Apply and maintain an alternative control measure such that the surface is stabilized, provided that the alternative measure is not prohibited under paragraph (b)(2) or (b)(4) of this section.

(4) *Vacant lots.* The following provisions shall be implemented as applicable.

(i) *Weed abatement.* No person shall remove vegetation from any vacant lot by blading, disking, plowing under or any other means without implementing all of the following RACM to prevent or minimize fugitive dust.

(A) Apply a dust suppressant(s) to the total surface area subject to disturbance immediately prior to or during the weed abatement.

(B) Prevent or eliminate material track-out onto paved surfaces and access points adjoining paved surfaces.

(C) Apply a dust suppressant(s), gravel, compaction or alternative control measure immediately following weed abatement to the entire disturbed surface area such that the surface is stabilized.

(ii) *Disturbed surfaces.* Any owners/operators of an urban or suburban open area or vacant lot of which any portion has a disturbed surface area(s) that remain(s) unoccupied, unused, vacant or undeveloped for more than fifteen (15) calendar days shall implement one of the following RACM within sixty (60) calendar days following the disturbance.

(A) Establish ground cover vegetation on all disturbed surface areas in sufficient quantity to maintain a stabilized surface; or

(B) Apply a dust suppressant(s) to all disturbed surface areas in sufficient quantity and frequency to maintain a stabilized surface; or

(C) Restore to a natural state, i.e. as existing in or produced by nature without cultivation or artificial influence, such that all disturbed surface areas are stabilized; or

(D) Apply and maintain surface gravel uniformly such that all disturbed surface areas are stabilized; or

(E) Apply and maintain an alternative control measure such that the surface is stabilized, provided that the alternative measure is not prohibited under paragraph (b)(2) or (b)(4) of this section.

(iii) *Motor vehicle disturbances.* Any owners/operators of an urban or suburban open area or vacant lot of which any portion has a disturbed surface area due to motor vehicle or off-road motor vehicle use or parking, notwithstanding weed abatement operations or use or parking by the owner(s), shall implement one of the following RACM within 60 calendar days following the initial determination of disturbance.

(A) Prevent motor vehicle and off-road motor vehicle trespass/ parking by applying fencing, shrubs, trees, barriers or other effective measures; or

(B) Apply and maintain surface gravel or chemical/organic stabilizer uniformly such that all disturbed surface areas are stabilized.

(5) *Implementation date of RACM.* All of the requirements in paragraph (d) of this section shall be effective eight (8) months from September 2, 1998. For requirements in paragraph (d)(4)(ii) and (d)(4)(iii) of this section, RACM shall be implemented within eight (8) months from September 2, 1998, or within 60 calendar days following the disturbance, whichever is later.

(e) *Monitoring and records.* (1) Any owners/operators that are subject to the provisions of this section shall compile and retain records that provide evidence of control measure application, indicating the type of treatment or measure, extent of coverage and date applied. For control measures involving chemical/organic stabilization, records shall also indicate the type of product applied, vendor name, label instructions for approved usage, and the method, frequency, concentration and quantity of application.

(2) Copies of control measure records and dust control plans along with supporting documentation shall be retained for at least three years.

(3) *Agency surveys.* (i) EPA or other appropriate entity shall conduct a survey of the number and size (or length) of unpaved roads, unpaved parking lots, and vacant lots subject to the provisions of this section located within the Phoenix PM–10 nonattainment area beginning no later than 365 days from September 2, 1998.

(ii) EPA or other appropriate entity shall conduct a survey at least every three years within the Phoenix PM–10 nonattainment area beginning no later than 365 days from September 2, 1998, which includes:

(A) An estimate of the percentage of unpaved roads, unpaved parking lots, and vacant lots subject to this section to which RACM as required in this section have been applied; and

(B) A description of the most frequently applied RACM and estimates of their control effectiveness.

Appendix A to § 52.128—Test Methods To Determine Whether A Surface Is Stabilized

I. Unpaved Roads and Unpaved Parking Lots

A. Opacity Observations

Conduct opacity observations in accordance with Reference Method 9 (40 CFR Part 60, appendix A) and Methods 203A and 203C of this appendix, with opacity readings taken at five second observation intervals and two consecutive readings per plume beginning with the first reading at zero seconds, in accordance with Method 203C, sections 2.3.2. and 2.4.2 of this appendix. Conduct visible opacity tests only on dry unpaved surfaces (i.e. when the surface is not damp to the touch) and on days when average wind speeds do not exceed 15 miles per hour (mph).

(i) Method 203A—Visual Determination of Opacity of Emissions From Stationary Sources for Time-Arranged Regulations

Method 203A is virtually identical to EPA's Method 9 (40 CFR Part 60 Appendix A) except for the data-reduction procedures, which provide for averaging times other than 6 minutes. That is, using Method 203A with a 6-minute averaging time would be the same as following EPA Method 9 (40 CFR Part 60, Appendix A). Additionally, Method 203A provides procedures for fugitive dust applications. The certification procedures provided in section 3 are virtually identical to Method 9 (40 CFR Part 60, Appendix A) and are provided here, in full, for clarity and convenience.

1. Applicability and Principle

1.1 Applicability. This method is applicable for the determination of the opacity of emissions from sources of visible emissions for time-averaged regulations. A time-averaged regulation is any regulation that requires averaging visible emission data to determine the opacity of visible emissions over a specific time period.

1.2 Principle. The opacity of emissions from sources of visible emissions is determined visually by an observer qualified according to the procedures of section 3.

2. Procedures

An observer qualified in accordance with section 3 of this method shall use the following procedures for visually determining the opacity of emissions.

2.1 Procedures for Emissions from Stationary Sources. These procedures are not applicable to this section.

2.2 Procedures for Fugitive Process Dust Emissions. These procedures are applicable for the determination of the opacity of fugitive emissions by a qualified observer. The qualified field observer should do the following:

2.2.1 Position. Stand at a position at least 5 meters from the fugitive dust source in order to provide a clear view of the emissions with the sun oriented in the 140-degree sector to the back. Consistent as much as possible with maintaining the above requirements, make opacity observations from a position such that the line of vision is approximately perpendicular to the plume and wind direction. As much as possible, if multiple plumes are involved, do not include more than one plume in the line of sight at one time.

2.2.2 Field Records. Record the name of the plant or site, fugitive source location, source type [pile, stack industrial process unit, incinerator, open burning operation activity, material handling (transfer, loading, sorting, etc.)], method of control used, if any, observer's name, certification data and affiliation, and a sketch of the observer's position relative to the fugitive source. Also, record the time, estimated distance to the fugitive source location, approximate wind direction, estimated wind speed, description of the sky condition (presence and color of clouds), observer's position relative to the fugitive source, and color of the plume and type of background on the visible emission observation form when opacity readings are initiated and completed.

2.2.3 Observations. Make opacity observations, to the extent possible, using a contrasting background that is perpendicular to the line of vision. For roads, storage piles, and parking lots, make opacity observations approximately 1 meter above the surface from which the plume is generated. For other fugitive sources, make opacity observations at the point of greatest opacity in that portion of the plume where condensed water vapor is not present. For intermittent sources, the initial observation should begin immediately after a plume has been created above the surface involved. Do not look continuously at the plume but, instead, observe the plume momentarily at 15-second intervals.

2.3 Recording Observations. Record the opacity observations to the nearest 5 percent every 15 seconds on an observational record sheet. Each momentary observation recorded represents the average opacity of emissions for a 15-second period.

2.4 Data Reduction for Time-Averaged Regulations. A set of observations is composed of an appropriate number of consecutive observations determined by the averaging time specified. Divide the recorded observations into sets of appropriate time lengths for the specified averaging time. Sets must consist of consecutive observations; however, observations immediately preceding and following interrupted observations shall be deemed consecutive. Sets need not be consecutive in time and in no case shall two sets overlap, resulting in multiple violations. For each set of observations, calculate the appropriate average opacity.

3. Qualification and Testing

3.1 Certification Requirements. To receive certification as a qualified observer, a candidate must be tested and demonstrate the ability to assign opacity readings in 5 percent increments to 25 different black plumes and 25 different white plumes, with an error not to exceed 15 percent opacity on any one reading and an average error not to exceed 7.5 percent opacity in each category. Candidates shall be tested according to the procedures described in paragraph 3.2. Any smoke generator used pursuant to paragraph 3.2 shall be equipped with a smoke meter which meets the requirements of paragraph 3.3. Certification tests that do not meet the requirements of paragraphs 3.2 and 3.3 are not valid.

The certification shall be valid for a period of 6 months, and after each 6-month period, the qualification procedures must be repeated by an observer in order to retain certification.

3.2 Certification Procedure. The certification test consists of showing the candidate a complete run of 50 plumes, 25 black plumes and 25 white plumes, generated by a smoke generator. Plumes shall be presented in random order within each set of 25 black and 25 white plumes. The candidate assigns an opacity value to each plume and records the observation on a suitable form. At the completion of each run of 50 readings, the score of the candidate is determined. If a candidate fails to qualify, the complete run of 50 readings must be repeated in any retest. The smoke test may be administered as part of a smoke school or training program, and may be preceded by training or familiarization runs of the smoke generator during which candidates are shown black and white plumes of known opacity.

3.3 Smoke Generator Specifications. Any smoke generator used for the purpose of paragraph 3.2 shall be equipped with a smoke meter installed to measure opacity across the diameter of the smoke generator stack. The smoke meter output shall display in-stack opacity, based upon a path length equal to the stack exit diameter on a full 0 to 100 percent chart recorder scale. The smoke meter optical design and performance shall meet the specifications shown in Table A. The smoke meter shall be calibrated as prescribed in paragraph 3.3.1 prior to conducting each smoke reading test. At the completion of each test, the zero and span drift, shall be checked, and if the drift exceeds ±1 percent opacity, the condition shall be corrected prior to conducting any subsequent test runs. The smoke meter shall be demonstrated at the time of installation to meet the specifications listed in Table A. This demonstration shall be repeated following any subsequent repair or replacement of the photocell or associated electronic circuitry including the chart recorder or output meter, or every 6 months, whichever occurs first.

3.3.1 Calibration. The smoke meter is calibrated after allowing a minimum of 30 minutes warm-up by alternately producing simulated opacity of 0 percent and 100 percent. When stable response at 0 percent or 100 percent is noted, the smoke meter is adjusted to produce an output of 0 percent or 100 percent, as appropriate. This calibration shall be repeated until stable 0 percent and 100 percent readings are produced without adjustment. Simulated 0 percent and 100 percent opacity values may be produced by alternately switching the power to the light source on and off while the smoke generator is not producing smoke.

3.3.2 Smoke Meter Evaluation. The smoke meter design and performance are to be evaluated as follows:

3.3.2.1 Light Source. Verify from manufacturer's data and from voltage measurements made at the lamp, as installed, that the lamp is operated within ±5 percent of the nominal rated voltage.

3.3.2.2 Spectral Response of Photocell. Verify from manufacturer's data that the photocell has a photopic response; i.e., the spectral sensitivity of the cell shall closely approximate the standard spectral-luminosity curve for photopic vision which is referenced in (b) of Table A.

3.3.2.3 Angle of View. Check construction geometry to ensure that the total angle of view of the smoke plume, as seen by the photocell, does not exceed 15 degrees. Calculate the total angle of view as follows:

$$\phi_v = 2 \tan^{-1} d/2L$$

Where:

ϕ_v = total angle of view;
d = the photocell diameter + the diameter of the limiting aperture; and
L = distance from the photocell to the limiting aperture.

The limiting aperture is the point in the path between the photocell and the smoke plume where the angle of view is most restricted. In smoke generator smoke meters, this is normally an orifice plate.

3.3.2.4 Angle of Projection. Check construction geometry to ensure that the total angle of projection of the lamp on the smoke plume does not exceed 15 degrees. Calculate the total angle of projection as follows:

$$\phi_p = 2 \tan^{-1} d/2L$$

Where:

ϕ_p = total angle of projection;
d = the sum of the length of the lamp filament + the diameter of the limiting aperture; and
L = the distance from the lamp to the limiting aperture.

3.3.2.5 Calibration Error. Using neutral-density filters of known opacity, check the error between the actual response and the theoretical linear response of the smoke meter. This check is accomplished by first calibrating the smoke meter according to 3.3.1 and then inserting a series of three neutral-density filters of nominal opacity of 20, 50, and 75 percent in the smoke meter path length. Use filters calibrated within ±2 percent. Care should be taken when inserting the filters to prevent stray light from affecting the meter. Make a total of five nonconsecutive readings for each filter. The maximum opacity error on any one reading shall be ±3 percent.

3.3.2.6 Zero and Span Drift. Determine the zero and span drift by calibrating and operating the smoke generator in a normal manner over a 1-hour period. The drift is measured by checking the zero and span at the end of this period.

3.3.2.7 Response Time. Determine the response time by producing the series of five simulated 0 percent and 100 percent opacity values and observing the time required to reach stable response. Opacity values of 0 percent and 100 percent may be simulated by alternately switching the power to the light

source off and on while the smoke generator is not operating.

4. References

1. U.S. Environmental Protection Agency. Standards of Performance for New Stationary Sources; appendix A; Method 9 for Visual Determination of the Opacity of Emissions from Stationary Sources. Final Rule. 39 FR 219. Washington, DC. U.S. Government Printing Office. November 12, 1974.

2. Office of Air and Radiation. ''Quality Assurance Guideline for Visible Emission Training Programs.'' EPA–600/S4–83–011. Quality Assurance Division. Research Triangle Park, N.C. May 1982.

3. ''Method 9—Visible Determination of the Opacity of Emissions from Stationary Sources.'' February 1984. Quality Assurance Handbook for Air Pollution Measurement Systems. Volume III, section 3.1.2. Stationary Source Specific Methods. EPA–600–4–77–027b. August 1977. Office of Research and Development Publications, 26 West Clair Street, Cincinnati, OH.

4. Office of Air Quality Planning and Standards. ''Opacity Error for Averaging and Nonaveraging Data Reduction and Reporting Techniques.'' Final Report–SR–1–6–85. Emission Measurement Branch, Research Triangle Park, N.C. June 1985.

5. The U.S. Environmental Protection Agency. Preparation, Adoption, and Submittal of State Implementation Plans. Methods for Measurement of PM_{10} Emissions from Stationary Sources. Final Rule. **Federal Register**. Washington, DC. U.S. Government Printing Office. Volumes 55. No. 74. pps. 14246–14279. April 17, 1990.

(ii) Method 203C—Visual Determination of Opacity of Emissions From Stationary Sources for Instantaneous Limitation Regulations

Method 203C is virtually identical to EPA's Method 9 (40 CFR Part 60, Appendix A), except for the data-reduction procedures which have been modified for application to instantaneous limitation regulations. Additionally, Method 203C provides procedures for fugitive dust applications which were unavailable when Method 9 was promulgated. The certification procedures in section 3 are identical to Method 9. These certification procedures are provided in Method 203A as well, and, therefore, have not been repeated in this method.

1. Applicability and Principle

1.1 Applicability. This method is applicable for the determination of the opacity of emissions from sources of visible emissions for instantaneous limitations. An instantaneous limitation regulation is an opacity limit which is never to be exceeded.

1.2 Principle. The opacity of emissions from sources of visible emissions is determined visually by a qualified observer.

2. Procedures

The observer qualified in accordance with section 3 of this method shall use the following procedures for visually determining the opacity of emissions.

2.1 Procedures for Emissions From Stationary Sources. Same as 2.1, Method 203A.

2.1.1 Position. Same as 2.1.1, Method 203A.

2.1.2 Field Records. Same as 2.1.2, Method 203A.

2.1.3 Observations. Make opacity observations at the point of greatest opacity in that portion of the plume where condensed water vapor is not present.

Do not look continuously at the plume. Instead, observe the plume momentarily at the interval specified in the subject regulation. Unless otherwise specified, a 15-second observation interval is assumed.

2.1.3.1 Attached Steam Plumes. Same as 2.1.3.1, Method 203A.

2.1.3.2 Detached Steam Plumes. Same as 2.1.3.2, Method 203A.

2.2 Procedures for Fugitive Process Dust Emissions.

2.2.1 Position. Same as section 2.2.1, Method 203A.

2.2.2 Field Records. Same as section 2.2.2, Method 203A.

2.2.3 Observations.

2.2.3.1 Observations for a 15-second Observation Interval Regulations. Same as section 2.2.3, Method 203A.

2.2.3.2 Observations for a 5-second Observation Interval Regulations. Same as section 2.2.3, Method 203A, except, observe the plume momentarily at 5-second intervals.

2.3 Recording Observations. Record opacity observations to the nearest 5 percent at the prescribed interval on an observational record sheet. Each momentary observation recorded represents the average of emissions for the prescribed period. If a 5-second observation period is not specified in the applicable regulation, a 15-second interval is assumed. The overall time for which recordings are made shall be of a length appropriate to the regulation for which opacity is being measured.

2.3.1 Recording Observations for 15-second Observation Interval Regulations. Record opacity observations to the nearest 5 percent at 15-second intervals on an observational record sheet. Each momentary observation recorded represents the average of emissions for a 15-second period.

2.3.2 Recording Observations for 5-second Observation Interval Regulations. Record opacity observations to the nearest 5 percent at 5-second intervals on an observational record sheet. Each momentary observation recorded represents the average of emissions for 5-second period.

2.4 Data Reduction for Instantaneous Limitation Regulations. For an instantaneous limitation regulation, a 1-minute averaging time will be used. Divide the observations recorded on the record sheet into sets of consecutive observations. A set is composed of the consecutive observations made in 1 minute. Sets need not be consecutive in time, and in no case shall two sets overlap. Reduce opacity observations by dividing the sum of all observations recorded in a set by the number of observations recorded in each set.

2.4.1 Data Reduction for 15-second Observation Intervals. Reduce opacity observations by averaging four consecutive observations recorded at 15-second intervals. Divide the observations recorded on the record sheet into sets of four consecutive observations. For each set of four observations, calculate the average by summing the opacity of the four observations and dividing this sum by four.

2.4.2 Data Reduction for 5-second Observation Intervals. Reduce opacity observations by averaging 12 consecutive observations recorded at 5-second intervals. Divide the observations recorded on the record sheet into sets of 12 consecutive observations. For each set of 12 observations, calculate the average by summing the opacity of the 12 observations and dividing this sum by 12.

3. Qualification and Test

Same as section 3, Method 203A.

TABLE A.—SMOKE METER DESIGN AND PERFORMANCE SPECIFICATIONS

Parameter	Specification
a. Light Source	Incandescent lamp operated at nominal rated voltage.
b. Spectral response of photocell	Photopic (daylight spectral response of the human eye—Reference 4.1 of section 4.)
c. Angle of view	15 degrees maximum total angle
d. Angle of projection	15 degrees maximum total angle.
e. Calibration error	±3 percent opacity, maximum.
f. Zero and span drift	±1 percent opacity, 30 minutes.
g. Response time	≤5 seconds.

B. Silt Content

Conduct the following test method to determine the silt loading and silt content of unpaved road and unpaved parking lot surfaces.

(i) Collect a sample of loose surface material from an area 30 cm by 30 cm (1 foot by 1 foot) in size to a depth of approximately 1 cm or until a hard subsurface is reached, whichever occurs first. Use a brush and dustpan or other similar device. Collect the sample from a routinely-traveled portion of the surface which receives a preponderance of vehicle traffic, i.e. as commonly evidenced by tire tracks. Conduct sweeping slowly so

that fine surface material is not released into the air. Only collect samples from surfaces that are not wet or damp due to precipitation or dew.

(ii) Obtain a shallow, lightweight container and a scale with readings in half ounce increments or less. Place the scale on a level surface and zero it with the weight of the empty container. Transfer the entire sample collected to the container, minimizing escape of particles into the air. Weigh the sample and record its weight.

(iii) Obtain and stack a set of sieves with the following openings: 4 mm, 2 mm, 1 mm, 0.5 mm, and 0.25 mm. Place the sieves in order according to size openings beginning with the largest size opening at the top. Place a collector pan underneath the bottom (0.25 mm) sieve. Pour the entire sample into the top sieve, minimizing escape of particles into the air by positioning the sieve/collector pan unit in an enclosed or wind barricaded area. Cover the sieve/collector pan unit with a lid. Shake the covered sieve/collector pan unit vigorously for a period of at least one (1) minute in both the horizontal and vertical planes. Remove the lid from the sieve/collector pan unit and disassemble each sieve separately beginning with the largest sieve. As each sieve is removed, examine it for a complete separation of material in order to ensure that all material has been sifted to the finest sieve through which it can pass. If not, reassemble and cover the sieve/collector pan unit and shake it for period of at least one (1) minute. After disassembling the sieve/collector pan unit, transfer the material which is captured in the collector pan into the lightweight container originally used to collect and weigh the sample. Minimize escape of particles into the air when transferring the material into the container. Weigh the container with the material from the collector pan and record its weight. Multiply the resulting weight by 0.38 if the source is an unpaved road or by 0.55 if the source is an unpaved parking lot to estimate silt loading. Divide by the total sample weight and multiply by 100 to arrive at the percent silt content.

(iv) As an alternative to conducting the procedure described above in section I.B.(ii) and section I.B.(iii) of this appendix, the sample (collected according to section I.B.(i) of this appendix) may be taken to an independent testing laboratory or engineering facility for silt loading (*e.g.* net weight < 200 mesh) and silt content analysis according to the following test method from ''Procedures For Laboratory Analysis Of Surface/Bulk Dust Loading Samples'', (Fifth Edition, Volume I, Appendix C.2.3 ''Silt Analysis'', 1995), AP–42, Office of Air Quality Planning & Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina.

1. Objective—Several open dust emission factors have been found to be correlated with the silt content(< 200 mesh) of the material being disturbed. The basic procedure for silt content determination is mechanical, dry sieving. For sources other than paved roads, the same sample which was oven-dried to determine moisture content is then mechanically sieved.

2.1 Procedure—Select the appropriate 20-cm (8-in.) diameter, 5-cm (2-in.) deep sieve sizes.

Recommended U. S. Standard Series sizes are 3/8 in., No. 4, No. 40, No. 100, No. 140, No. 200, and a pan. Comparable Tyler Series sizes can also be used. The No. 20 and the No. 200 are mandatory. The others can be varied if the recommended sieves are not available, or if buildup on 1 particulate sieve during sieving indicates that an intermediate sieve should be inserted.

2.2 Obtain a mechanical sieving device, such as a vibratory shaker or a Roto-Tap ® [1] without the tapping function.

2.3 Clean the sieves with compressed air and/or a soft brush. Any material lodged in the sieve openings or adhering to the sides of the sieve should be removed, without handling the screen roughly, if possible.

2.4 Obtain a scale (capacity of at least 1600 grams [g] or 3.5 lb) and record make, capacity, smallest division, date of last calibration, and accuracy. (See Figure A)

2.5 Weigh the sieves and pan to determine tare weights. Check the zero before every weighing. Record the weights.

2.6 After nesting the sieves in decreasing order of size, and with pan at the bottom, dump dried laboratory sample (preferably immediately after moisture analysis) into the top sieve. The sample should weigh between ~ 400 and 1600 g (~ 0.9 and 3.5 lb). This amount will vary for finely textured materials, and 100 to 300 g may be sufficient when 90% of the sample passes a No. 8 (2.36 mm) sieve. Brush any fine material adhering to the sides of the container into the top sieve and cover the top sieve with a special lid normally purchased with the pan.

2.7 Place nested sieves into the mechanical sieving device and sieve for 10 minutes (min). Remove pan containing minus No. 200 and weigh. Repeat the sieving at 10-min intervals until the difference between 2 successive pan sample weighings (with the pan tare weight subtracted) is less than 3.0%. Do not sieve longer than 40 min.

2.8 Weigh each sieve and its contents and record the weight. Check the zero before every weighing.

2.9 Collect the laboratory sample. Place the sample in a separate container if further analysis is expected.

2.10 Calculate the percent of mass less than the 200 mesh screen (75 micrometers [μm]). This is the silt content.

Figure A. Example silt analysis form.

Silt Analysis

Dated: _____
By: _____
Sample No: _____ Sample Weight (after drying)
Material: _____
Pan + Sample: _____
Pan: _____
Split Sample Balance: _____
Dry Sample: _____
Make _____ Capacity: _____
Smallest Division _____
Final Weight _____
% Silt = [Net Weight <200 Mesh] ÷ [Total Net Weight × 100] =____%

SIEVING

Time: Start:	Weight (Pan Only)
Initial (Tare):	
10 min:	
20 min:	
30 min:	
40 min:	

Screen	Tare weight (screen)	Final weight (screen + sample)	Net weight (sample)	%
⅜ in.				
4 mesh.				
10 mesh.				
20 mesh.				
40 mesh.				
100 mesh.				
140 mesh.				
200 mesh.				
Pan.				

(v) The silt loading and percent silt content for any given unpaved road surface or unpaved parking lot surface shall be based on the average of at least three (3) samples that are representative of routinely-traveled portions of the road or parking lot surface. In order to simplify the sieve test procedures in section I.B.(ii) and section I.B.(iii) of this appendix, the three samples may be combined as long as all material is sifted to the finest sieve through which it can pass, each sample weighs within 1 ounce of the other two samples, and the combined weight of the samples and unit area from which they were collected is calculated and recorded accurately.

[1] CFR part 60, App. A, Meth. 5, 2.1.2, footnote 2.

II. Vacant Lots

The following test methods shall be used for determining whether a vacant lot, or portion thereof, has a stabilized surface.

Should a disturbed vacant lot contain more than one type of disturbance, soil, vegetation or other characteristics which are visibly distinguishable, test each representative surface for stability separately in random areas according to the test methods in section II. of this appendix and include or eliminate it from the total size assessment of disturbed surface area(s) depending upon test method results. A vacant lot surface shall be considered stabilized if any of the test methods in section II. of this appendix indicate that the surface is stabilized such that the conditions defined in paragraph (b)(16)(ii) of this section are met:

1. Visible Crust Determination

(i) Where a visible crust exists, drop a steel ball with a diameter of 15.9 millimeters (0.625 inches) and a mass ranging from 16 to 17 grams from a distance of 30 centimeters (one foot) directly above (at a 90 degree angle perpendicular to) the soil surface. If blowsand is present, clear the blowsand from the surfaces on which the visible crust test method is conducted. Blowsand is defined as thin deposits of loose uncombined grains covering less than 50 percent of a vacant lot which have not originated from the representative vacant lot surface being tested. If material covers a visible crust which is not blowsand, apply the test method in section II.2 of this appendix to the loose material to determine whether the surface is stabilized.

(ii) A sufficient crust is defined under the following conditions: once a ball has been dropped according to section II.1.(i) of this appendix, the ball does not sink into the surface so that it is partially or fully surrounded by loose grains and, upon removing the ball, the surface upon which it fell has not been pulverized so that loose grains are visible.

(iii) Conduct three tests, dropping the ball once per test, within a survey area the size of one foot by one foot. The survey area shall be considered sufficiently crusted if at least two out of three tests meet the definition in section II.1.(ii) of this appendix. Select at least two other survey areas that represent the disturbed surface area and repeat this procedure. Whether a sufficient crust covers the disturbed surface area shall be based on a determination that all of the survey areas tested are sufficiently crusted.

(iv) At any given site, the existence of a sufficient crust covering one portion of a disturbed surface may not represent the existence or protectiveness of a crust on another disturbed surface(s). Repeat the visible crust test as often as necessary on each representative disturbed surface area for an accurate assessment of all disturbed surfaces at a given site.

2. Determination of Threshold Friction Velocity (TFV)

For disturbed surface areas that are not crusted or vegetated, determine threshold friction velocity (TFV) according to the following sieving field procedure (based on a 1952 laboratory procedure published by W. S. Chepil).

(i) Obtain and stack a set of sieves with the following openings: 4 millimeters (mm), 2 mm, 1 mm, 0.5 mm, and 0.25 mm. Place the sieves in order according to size openings beginning with the largest size opening at the top. Place a collector pan underneath the bottom (0.25 mm) sieve. Collect a sample of loose surface material from an area at least 30 cm by 30 cm in size to a depth of approximately 1 cm using a brush and dustpan or other similar device. Only collect soil samples from dry surfaces (i.e. when the surface is not damp to the touch). Remove any rocks larger than 1 cm in diameter from the sample. Pour the sample into the top sieve (4 mm opening) and cover the sieve/collector pan unit with a lid. Minimize escape of particles into the air when transferring surface soil into the sieve/collector pan unit. Move the covered sieve/collector pan unit by hand using a broad, circular arm motion in the horizontal plane. Complete twenty circular arm movements, ten clockwise and ten counterclockwise, at a speed just necessary to achieve some relative horizontal motion between the sieves and the particles. Remove the lid from the sieve/collector pan unit and disassemble each sieve separately beginning with the largest sieve. As each sieve is removed, examine it for loose particles. If loose particles have not been sifted to the finest sieve through which they can pass, reassemble and cover the sieve/collector pan unit and gently rotate it an additional ten times. After disassembling the sieve/collector pan unit, slightly tilt and gently tap each sieve and the collector pan so that material aligns along one side. In doing so, minimize escape of particles into the air. Line up the sieves and collector pan in a row and visibly inspect the relative quantities of catch in order to determine which sieve (or whether the collector pan) contains the greatest volume of material. If a visual determination of relative volumes of catch among sieves is difficult, use a graduated cylinder to measure the volume. Estimate TFV for the sieve catch with the greatest volume using Table 1, which provides a correlation between sieve opening size and TFV.

TABLE 1 (METRIC UNITS).—DETERMINATION OF THRESHOLD FRICTION VELOCITY (TFV)

Tyler Sieve No.	Opening (mm)	TFV (cm/s)
5	4	>100
10	2	100
18	1	76
35	0.5	58
60	0.25	43
Collector Pan	.....	30

Collect at least three (3) soil samples which are representative of the disturbed surface area, repeat the above TFV test method for each sample and average the resulting TFVs together to determine the TFV uncorrected for non-erodible elements.

(ii) Non-erodible elements are distinct elements on the disturbed surface area that are larger than one (1) cm in diameter, remain firmly in place during a wind episode and inhibit soil loss by consuming part of the shear stress of the wind. Non-erodible elements include stones and bulk surface material but do not include flat or standing vegetation. For surfaces with non-erodible elements, determine corrections to the TFV by identifying the fraction of the survey area, as viewed from directly overhead, that is occupied by non-erodible elements using the following procedure. Select a survey area of one (1) meter by 1 meter. Where many non-erodible elements lie on the disturbed surface area, separate them into groups according to size. For each group, calculate the overhead area for the non-erodible elements according to the following equations:

(Average length) × (Average width) = Average Dimensions *Eq. 1*

(Average Dimensions) × (Number of Elements) = Overhead Area *Eq. 2*

Overhead Area of Group 1 + Overhead Area of Group 2 (etc.) = Total Overhead Area *Eq. 3*

Total Overhead Area/2 = Total Frontal Area *Eq. 4*

(Total Frontal Area/Survey Area) × 100 = Percent Cover of Non-erodible Elements *Eq. 5*

(Ensure consistent units of measurement, e.g. square meters or square inches when calculating percent cover.)

Repeat this procedure on an additional two (2) distinct survey areas representing a disturbed surface and average the results. Use Table 2 to identify the correction factor for the percent cover of non-erodible elements. Multiply the TFV by the corresponding correction factor to calculate the TFV corrected for non-erodible elements.

TABLE 2.—CORRECTION FACTORS FOR THRESHOLD FRICTION VELOCITY

Percent cover of non-erodible elements	Correction factor
≥10%	5
≥5% and < 10%	3
< 5% and ≥ 1%	2
< 1%	None.

3. Determination of Flat Vegetation Cover

Flat vegetation includes attached (rooted) vegetation or unattached vegetative debris lying on the surface with a predominant horizontal orientation that is not subject to movement by wind. Flat vegetation which is dead but firmly attached shall be considered equally protective as live vegetation. Stones or other aggregate larger than one centimeter in diameter shall be considered protective cover in the course of conducting the line transect method. Where flat vegetation exists, conduct the following line transect method.

(i) Stretch a one-hundred (100) foot measuring tape across a disturbed surface area. Firmly anchor both ends of the measuring tape into the surface using a tool such as a screwdriver with the tape stretched taut and close to the soil surface. If vegetation exists in regular rows, place the tape diagonally (at approximately a 45 degree angle) away from a parallel or perpendicular position to the vegetated rows. Pinpoint an area the size of a 3/32 inch diameter brazing

rod or wooden dowel centered above each one-foot interval mark along one edge of the tape. Count the number of times that flat vegetation lies directly underneath the pinpointed area at one-foot intervals. Consistently observe the underlying surface from a 90 degree angle directly above each pinpoint on one side of the tape. Do not count the underlying surface as vegetated if any portion of the pinpoint extends beyond the edge of the vegetation underneath in any direction. If clumps of vegetation or vegetative debris lie underneath the pinpointed area, count the surface as vegetated unless bare soil is visible directly below the pinpointed area. When 100 observations have been made, add together the number of times a surface was counted as vegetated. This total represents the percent of flat vegetation cover (e.g. if 35 positive counts were made, then vegetation cover is 35 percent). If the disturbed surface area is too small for 100 observations, make as many observations as possible. Then multiply the count of vegetated surface areas by the appropriate conversion factor to obtain percent cover. For example, if vegetation was counted 20 times within a total of 50 observations, divide 20 by 50 and multiply by 100 to obtain a flat vegetation cover of 40 percent.

(ii) Conduct the above line transect test method an additional two (2) times on areas representative of the disturbed surface and average results.

4. Determination of Standing Vegetation Cover

Standing vegetation includes vegetation that is attached (rooted) with a predominant vertical orientation. Standing vegetation which is dead but firmly rooted shall be considered equally protective as live vegetation. Conduct the following standing vegetation test method to determine if 30 percent cover or more exists. If the resulting percent cover is less than 30 percent but equal to or greater than 10 percent, then conduct the Threshold Friction Velocity test in section II.2 of this appendix in order to determine whether the disturbed surface area is stabilized according to paragraph (b)(16)(ii)(E) of this section.

(i) For standing vegetation that consists of large, separate vegetative structures (for example, shrubs and sagebrush), select a survey area representing the disturbed surface that is the shape of a square with sides equal to at least ten (10) times the average height of the vegetative structures. For smaller standing vegetation, select a survey area of three (3) feet by 3 feet.

(ii) Count the number of standing vegetative structures within the survey area. Count vegetation which grows in clumps as a single unit. Where different types of vegetation exists and/or vegetation of different height and width exists, separate the vegetative structures with similar dimensions into groups. Count the number of vegetative structures in each group within the survey area. Select an individual structure within each group that represents the average height and width of the vegetation in the group. If the structure is dense (i.e. when looking at it vertically from base to top there is little or zero open air space within its perimeter), calculate and record its frontal silhouette area according to Equation 6 of this appendix. Also use Equation 6 if the survey area is larger than nine square feet, estimating the average height and width of the vegetation. Otherwise, use the procedure in section II.4.(iii) of this appendix to calculate the Frontal Silhouette Area. Then calculate the percent cover of standing vegetation according to Equations 7, 8 and 9 of this appendix. (Ensure consistent units of measurement, e.g. square feet or square inches when calculating percent cover.)

(iii) Vegetative Density Factor. Cut a single, representative piece of vegetation (or consolidated vegetative structure) to within 1 cm of surface soil. Using a white paper grid or transparent grid over white paper, lay the vegetation flat on top of the grid (but do not apply pressure to flatten the structure). Grid boxes of one inch or one half inch squares are sufficient for most vegetation when conducting this procedure. Using a marker or pencil, outline the shape of the vegetation along its outer perimeter according to Figure B, C or D of this appendix, as appropriate. (**Note:** Figure C differs from Figure D primarily in that the width of vegetation in Figure C is narrow at its base and gradually broadens to its tallest height. In Figure D, the width of the vegetation generally becomes narrower from its midpoint to its tallest height.) Remove the vegetation and count and record the total number of gridline intersections within the outlined area, but do not count gridline intersections that connect with the outlined shape. There must be at least 10 gridline intersections within the outlined area and preferably more than 20, otherwise, use smaller grid boxes. Draw small circles (no greater than a 3/32 inch diameter) at each gridline intersection counted within the outlined area. Replace the vegetation on the grid within its outlined shape. From a distance of approximately two feet directly above the grid, observe each circled gridline intersection. Count and record the number of circled gridline intersections that are not covered by any piece of the vegetation. To calculate percent vegetative density, use Equations 10 and 11 of this appendix. If percent vegetative density is equal to or greater than 30, use the equation (Eq. 14, 15 or 16) that matches the outline used to trace the vegetation (Figure B, C or D) to calculate its Frontal Silhouette Area. If percent vegetative density is less than 30, use Equations 12 and 13 of this appendix to calculate the Frontal Silhouette Area.

(iv) Within a disturbed surface area that contains multiple types of vegetation with each vegetation type uniformly distributed, results of the percent cover associated with the individual vegetation types may be added together.

(v) Repeat this procedure on an additional two (2) distinct survey areas representing the disturbed surface and average the results.

Height × Width = Frontal Silhouette Area *Eq. 6*

(Frontal Silhouette Area of Individual Vegetative Structure) × Number of Vegetation Structures Per Group = Group Frontal Silhouette Area of Group *Eq. 7*

Frontal Silhouette Area of Group 1 + Frontal Silhouette Area of Group 2 (etc.) = Total Frontal Silhouette Area *Eq. 8*

(Total Frontal Silhouette Area/Survey Area) × 100 = Percent Cover of Standing Vegetation *Eq. 9*

[(Number of circled gridlines within the outlined area counted that are not covered by vegetation / Total number of gridline intersections within the outlined area) × 100] = Percent Open Space *Eq. 10*

100 = Percent Open Space = Percent Vegetative Density *Eq. 11*

Percent Vegetative Density/100 = Vegetative Density *Eq. 12*

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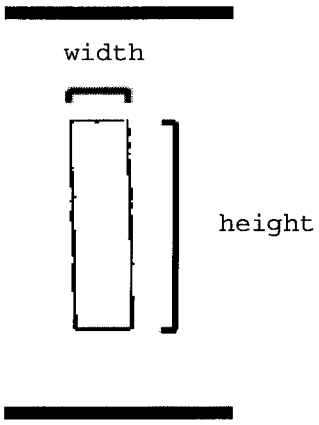
$$\left[\text{Max. Height} * \text{Width}\right] * \left[\frac{\text{Vegetative Density}}{0.4}\right]^{0.5} = \text{Frontal Silhouette Area} \qquad \text{Eq. 13}$$

Figure B



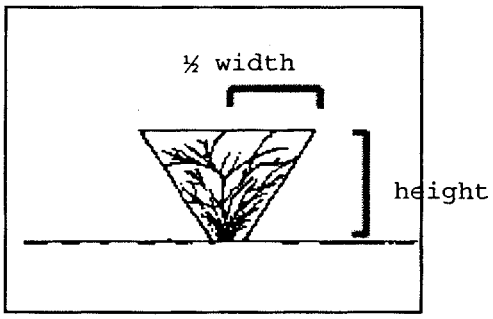
Cylinder:

Frontal Silhouette Area =

maximum (max.) height X max. width

Eq. 14

Figure C



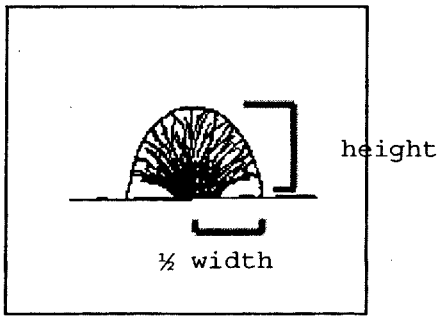
Inverted Cone:

Frontal Silhouette Area =

max. height X ½ max. width

Eq. 15

Figure D



Upper Sphere:

Frontal Silhouette Area =

(3.14 X max. height X ½ max. width)/2

Eq. 16

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III. Alternative Test Methods

Alternative test methods may be used upon obtaining the written approval of the EPA.

[FR Doc. 99–32760 Filed 12–20–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

RIN 0991–AA91

Federal Health Care Program: Fraud and Abuse; Statutory Exception to the Anti-Kickback Statute for Shared Risk Arrangements; Correction

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

ACTION: Interim final rule with comment period; correction amendment.

SUMMARY: This document contains corrections to the interim final regulations which were published in the **Federal Register** on Friday, November 19, 1999 (64 FR 63504). These regulations established two new safe harbors from the anti-kickback statute (section 1128B(b) of the Social Security Act) to provide protection for certain managed care arrangements. A number of inadvertent errors appeared in both the preamble and in the text of the regulations that warrant clarification or revision. As a result, we are setting forth these revisions in order to assure the technical correctness of that document and the regulations.

EFFECTIVE DATE: December 21, 1999.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, (202) 619–0089, OIG Regulations Officer.

SUPPLEMENTARY INFORMATION: The HHS Office of Inspector General (OIG) issued interim final regulations on November 19, 1999 (64 FR 63504) that set forth two new safe harbors from the anti-kickback statute to provide protection for certain managed care arrangements. In that interim final rule, a number of inadvertent errors appeared in the preamble and in 42 CFR part 1001 which are now being corrected.

In the preamble on page 63505, second column, an extra bullet point was inserted before the words ''Underwriters/National Association of Life Underwriters.'' As corrected, the eleventh bullet point appearing in column two should read as ''Independent Insurance Agents of America/National Association of Health Underwriters/National Association of Life Underwriters.''

On page 63507 of the preamble, in the third column, second paragraph, the reference to ''paragraph (1)(i)(A)(IV)'' should be corrected to read as ''paragraph (1)(i)(A)(4).'' Similarly, in the third paragraph on this page, the reference to ''§ 1001.952(t)(1)(i)(A)(IV)'' should be corrected to read as ''§ 1001.952(t)(i)(A)(4).''

In the first column on page 63508, in the second full paragraph, line 15, the words ''or cost'' should be inserted after the words ''programs on a fee-for-service.''

On page 63511, in the first column, the first line of the first full paragraph, the regulatory reference ''§ 1001.965(u)(2)(i)(B)'' should be corrected to read as ''§ 1001.952(u)(1)(i)(B).'' In addition, in the third full paragraph in column one on the same page, on the fourth and fifth lines, the parenthetical phrase ''(paragraphs (u)(1)(i)(C)(I)–(III))'' is revised to read as ''(paragraphs (u)(1)(i)(C)(1)–(3)).'' Lastly, in the last paragraph in column one, the parenthetical reference ''(paragraph (u)(1)(i)(C)(IV))'' should be corrected to read as ''(paragraph (u)(1)(i)(C)(4)).''

In addition, we are correcting the regulatory text that was set forth in § 1001.952(t). In the regulations text on page 63513, § 1001.952(t)(1)(i)(B) is amended by adding the words ''or cost'' after the words ''fee-for-service.'' In addition, in § 1001.952(t)(1)(ii)(B), we are (1) adding the words ''for or'' after the phrase ''receives remuneration in return'' and (2) are adding the words ''or cost'' after the words ''fee-for-service.'' These words were inadvertent omitted in the November 19, 1999 interim final rule.

List of Subjects in 42 CFR Part 1001

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare, Social Security.

Accordingly, 42 CFR part 1001 is corrected by making the following correcting amendments:

PART 1001—PROGRAM INTEGRITY—MEDICARE AND STATE HEALTH CARE PROGRAMS

1. The authority citation for part 1001 continues to read as follows:

Authority: 42 U.S.C. 1302, 1320a–7, 1320a–7b, 1395u(j), 1395y(d), 1395y(e), 1395cc(b)(2)(D), (E) and (F), and 1395hh; and sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note).

2. Section 1001.952 is amended by republishing the introductory text, and by revising paragraphs (t)(1)(i)(B) and (t)(1)(ii)(B) to read as follows:

§ 1001.952 Exceptions.

The following payment practices shall not be treated as a criminal offense under section 1128B of the Act and shall not serve as the basis for an exclusion:

* * * * *

(t) *Price reductions offered to eligible managed care organizations.* * * *

(1) * * *

(i) * * *

(B) In establishing the terms of the agreement, neither party gives or receives remuneration in return for or to induce the provision or acceptance of business (other than business covered by the agreement) for which payment may be made in whole or in part by a Federal health care program on a fee-for-service or cost basis.

* * * * *

(ii) * * *

(B) In establishing the terms of the agreement, neither party gives or receives remuneration in return for or to induce the provision or acceptance of business (other than business covered by the agreement) for which payment may be made in whole or in part by a Federal health care program on a fee-for-service or cost basis.

* * * * *

Dated: December 14, 1999.

Joel Schaer,

OIG Regulations Officer.

[FR Doc. 99–32940 Filed 12–20–99; 8:45 am]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7725]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain

management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Support Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

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

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

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

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region II				
New York: Sloatsburg, village of, Rockland County.	360690	July 7, 1975, Emerg.; January 6, 1982, Reg.; December 1, 1999, Susp.	December 1, 1999	December 1, 1999.

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region I				
Rhode Island: North Providence, town of, Providence County.	440020	October 6, 1972, Emerg.; December 15, 1977, Reg.; December 6, 1999, Susp.	December 6, 1999	December 6, 1999.
Region III				
Philadelphia: Smithfield, township of, Monroe County.	421896	November 8, 1974, Emerg.; March 4, 1988, Reg.; December 6, 1999, Susp.	.....do	Do.
Region V				
Michigan:				
Nashville, village of, Barry County.	260902	July 29, 1992, Emerg.; December 6, 1999, Reg.; December 6, 1999, Susp.	.....do	Do.
Northville, city of, Wayne & Oakland Counties.	260235	March 29, 1976, Emerg.; September 16, 1981, Reg.; December 6, 1999, Susp.	.....do	Do.
Ohio:				
Bay Village, city of, Cuyahoga County.	390093	June 14, 1974, Emerg.; December 1, 1977, Reg.; December 6, 1999, Susp.	.....do	Do.
Wisconsin:				
Ozaukee County, unincorporated areas.	550310	May 14, 1971, Emerg.; May 16, 1977, Reg.; December 6, 1999, Susp.	.....do	Do.
Saukville, village of, Ozaukee County.	550317	April 18, 1984, Emerg.; December 16, 1980, Reg.; December 6, 1999, Susp.	.....do	Do.
Region VI				
Oklahoma: Lincoln County, unincorporated areas.	400457	September 28, 1990, Emerg.; February 3, 1993, Reg.; December 6, 1999, Susp..	.....do	Do.
Texas:				
Midland, city of, Midland County.	480477	May 16, 1975, Emerg.; September 27, 1991, Reg.; December 6, 1999, Susp.	.....do	Do.
Midland County, unincorporated areas.	481239	March 8, 1978, Emerg.; September 27, 19991, Reg.; December 6, 1999, Susp.	.....do	Do.
Odessa, city of, Midland County.	480206	March 27, 1980, Emerg.; March 4, 1991, Reg.; December 6, 1999, Susp.	.....do	Do.
Region VII				
Iowa: Ankeny, city of, Polk County.	190226	June 13, 1975, Emerg.; May 16, 1983, Reg.; December 6, 1999, Susp.	.....do	Do.
Missouri:				
Foristell, city of, St. Charles County.	290902	February 24, 1993, Reg.; December 6, 1999, Susp.	.....do	Do.
Lee's Summit, city of, Jackson & Cass Counties.	290174	February 4, 1972, Emerg.; April 3, 1978, Reg.; December 6, 1999, Susp.	.....do	Do.
Nebraska:				
Albion, city of, Boone County.	310009	May 9, 1975, Emerg.; April 2, 1986, Reg.; December 6, 1999, Susp.	.....do	Do.
Boone County, unincorporated areas.	310008	July 28, 1982, Emerg.; September 18, 1987, Reg.; December 6, 1999, Susp.	.....do	Do.
Petersburg, village of, Boone County.	310308	August 13, 1976, Emerg.; September 24, 1984, Reg.; December 6, 1999, Susp.	.....do	Do.
St. Edward, village of, Boone County.	310010	November 2, 1974, Emerg.; February 1, 1990, Reg.; December 6, 1999, Susp.	.....do	Do.
Region VIII				
Utah: Santa Clara, town of, Washington County.	490178	August 7, 1975, Emerg.; August 5, 1986, Reg.; December 6, 1999, Susp.	.....do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region X				
Alaska: Kenai Peninsula, borough of.	020012	June 19, 1970, Emerg.; November 20, 1986, Reg.; December 6, 1999, Susp.	.....do	Do.
Washington: Kittitas County, unincorporated areas..	530095	February 5, 1974, Emerg.; May 5, 1981, Reg.; December 6, 1999, Susp.	.....do	Do.
Region I				
Vermont:				
Bellows Falls, village of, Windham County.	500125	June 23, 1975, Emerg.; July 16, 1979, Reg.; December 20, 1999, Susp.	December 20, 1999	December 20, 1999.
Rockingham, town of, Windham County.	500135	January 24, 1975, Emerg.; May 15, 1980, Reg.; December 20, 1999, Susp.	.....do	Do.
Springfield, town of, Windsor County.	500154	June 17, 1975, Emerg.; December 4, 1979, Reg.; December 20, 1999, Susp.	.....do	Do.
Thetford, town of, Orange County.	500075	October 20, 1975, Emerg; June 3, 1991, Reg.; December 20, 1999, Susp.	.....do	Do.
Region IV				
South Carolina:				
Hollywood, town of, Charleston County.	450037	February 18, 1986, Emerg.; June 17, 1986, Reg.; December 20, 1999, Susp.	.....do.	Do.
Ravenel, town of, Charleston County.	450043	September 25, 1975, Emerg.; April 1, 1981, Reg.; December 20, 1999, Susp.	.....do	Do.
Tennessee:				
Lincoln County, unincorporated areas.	470104	June 3, 1991, Emerg.; October 1, 1992, Reg.; December 20, 1999 Susp.	.....do	Do.
Petersburg, town of, Lincoln County.	470106	March 24, 1975, Emerg.; September 29, 1986, Reg.; December 20, 1999, Susp.	.....do	Do.
Region V				
Minnesota: Sauk Rapids, city of, Benton County.	270023	June 18, 1973, Emerg.; October 14, 1977, Reg.; December 20, 1999, Susp.	.....do	Do.
Wisconsin: Grant County, unincorporated areas.	555557	March 26, 1971, Emerg.; May 25, 1973, Reg.; December 20, 1999, Susp.	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension.

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

Issued: December 7, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–33009 Filed 12–20–99; 8:45 am]

BILLING CODE 6718–05–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 981014259–8312–02; I.D. 121499B]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for New Jersey.

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

ACTION: Commercial quota harvest.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the State of New Jersey has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in New Jersey for the remainder of calendar year 1999, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise the State of New Jersey that the quota has been harvested, and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in New Jersey.

DATES: Effective 0001 hours December 22, 1999 through 2400 hours December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, (978) 281–9273.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The final total commercial quota for summer flounder for the 1999 calendar year was set equal to 10,729,274 lb (4,866,717 kg) (64 FR 46596, August 26, 1999). The percent allocated to vessels landing summer flounder in New Jersey is 16.72499 percent, or 1,853,926 lb (840,927 kg).

Section 648.101(b) requires the Regional Administrator, Northeast Region (Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota is harvested. The Regional Administrator is further required to publish notification in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the State of New Jersey has attained its quota for 1999 as of December 22, 1999.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours December 22, 1999, further landings of summer flounder in New Jersey by vessels holding commercial Federal fisheries permits are prohibited for the remainder of the 1999 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective the same date, federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in New Jersey for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

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

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

Dated: December 15, 1999.

Gary C. Matlock,

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

[FR Doc. 99–33012 Filed 12–16–99; 4:48 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 244
Tuesday, December 21, 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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 99–082–1]

Pine Shoot Beetle; Regulated Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to amend the pine shoot beetle regulations by removing pine wreaths and garlands from the list of regulated articles. We believe that these commodities do not present a risk of spreading pine shoot beetle. This action would eliminate restrictions on the movement of pine wreaths and garlands from areas quarantined because of pine shoot beetle.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by February 22, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–082–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 99–082–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Christine Markham, Regional Program Manager, 920 Main Campus Drive, Suite 200, Raleigh, NC 27606–5202; (919) 716–5582; or Coanne E. O'Hern, Operations Officer, 4700 River Road, Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

Pine shoot beetle is a pest of pine trees. Pine shoot beetle can cause damage in weak and dying trees, where reproduction and immature stages of pine shoot beetle occur, and in the new growth of healthy trees. During ''maturation feeding,'' young beetles tunnel into the center of pine shoots (usually of the current year's growth), causing stunted and distorted growth in host trees. Adults can fly at least 1 kilometer, and infested trees and pine products are often transported long distances; these factors may result in the establishment of pine shoot beetle populations far from the location of the original host tree. This pest damages urban ornamental trees and can cause economic losses to the timber, Christmas tree, and nursery industries.

The regulations at 7 CFR 301.50 through 301.50–10, ''Subpart—Pine Shoot Beetle,'' restrict the interstate movement of regulated articles from quarantined areas in order to prevent the spread of pine shoot beetle into noninfested areas of the United States.

Section 301.50–2 lists articles regulated because of pine shoot beetle. Regulated articles are the following pine products (*Pinus* spp.): Bark nuggets (including bark chips), Christmas trees, logs with bark attached, lumber with bark attached, nursery stock, pine wreaths and garlands, raw pine materials for pine wreaths and garlands, and stumps.

We propose to remove pine wreaths and garlands from the list of regulated articles in § 301.50–2. This would mean that these commodities would no longer need to be issued a certificate or limited permit to move out of an area quarantined because of pine shoot beetle, and they would no longer have to be cold treated or fumigated prior to movement from a quarantined area. Pine wreaths and garlands would be able to move without restriction from a quarantined area.

We are proposing this change based on information we have accumulated during the course of our regulatory program. When we added pine wreaths and garlands to the list of regulated articles in 1995, we regulated the commodities as a precautionary measure because they are made of live plant (pine) material. At that time, industry in quarantined areas did not produce significant amounts of these commodities. Since that time, the domestic production of these commodities has increased, and we have learned a great deal about the risk associated with the movement of these commodities.

Over the years, we have learned that the manufacture of pine wreaths and garlands greatly reduces the risk that these commodities will carry pine shoot beetle. To increase the value and enhance the appearance of their products, producers of pine wreaths and garlands choose the freshest, healthiest, and most attractive pine material to create wreaths and garlands. First, this means that producers cut the pine material from the tree as close to the time of sale as possible. Therefore, because most pine wreaths and garlands are sold for the Christmas holiday, the material is removed from pine trees after the pine shoot beetle has moved to the base of the tree for overwintering. Second, this means that producers do not include any brown or thinning pine shoots in wreaths and garlands. In doing so, producers are excluding material that could be infested with pine shoot beetle.

We have also learned that, most often, ''pine'' wreaths produced in quarantined areas are actually made from balsam fir (*Abies balsamea*) adorned by minimal sprigs of pine and other species, such as arborvitae (*Thuja* spp.). Balsam fir is not a host of pine shoot beetle. Likewise, pine garlands produced in quarantined areas are generally made from eastern white pine (*Pinus strobus*), a pine species that is not a preferred host for pine shoot beetle. Although pine shoot beetle will feed on the shoots of, and breed in, eastern white pine and other pine species, pine shoot beetle prefers to feed on and breed in Scots pine (*Pinus sylvestris*) or jack pine (*Pinus banksiana*). However, even if pine

wreaths and garlands were made of favored host pine material, we believe that the way these commodities are manufactured would preclude the presence of pine shoot beetle.

Therefore, we believe that pine wreaths and garlands do not pose a risk of spreading pine shoot beetle. Accordingly, we propose to amend § 301.50–2(a) by removing pine wreaths and garlands from the list of regulated articles. Raw pine materials for wreaths and garlands, however, would continue to be listed as regulated articles in § 301.50–2(a) because those articles present a risk of spreading pine shoot beetle.

As a result of removing pine wreaths and garlands from the list of regulated articles, we also propose to amend § 301.50–10(b) and (c) by removing references to treatment options for pine wreaths and garlands. If pine wreaths and garlands were no longer regulated, there would be no reason to list treatments for these commodities in the regulations.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We propose to amend the pine shoot beetle regulations by removing pine wreaths and garlands from the list of regulated articles. We believe that these commodities do not present a risk of spreading pine shoot beetle. This action would eliminate restrictions on the movement of pine wreaths and garlands from areas quarantined because of pine shoot beetle.

In 1995, nurseries and other producers in quarantined areas earned an average of 4 percent of their revenue from wreaths and garlands. However, over the next 3 years, that amount doubled; in 1998, nurseries and other producers in quarantined areas increased their earnings from the sale of wreaths and garlands to an average of 8 to 10 percent of their revenue.

The highest levels of production of these commodities in quarantined areas occurs in northeastern States. In 1998, production of wreaths and garlands amounted to approximately $5.3 million in Vermont, approximately $3 million in New Hampshire, and approximately $10 to $12 million in Maine. Most wreaths and garlands produced in quarantined areas are sold locally.

Most of the producers of pine wreaths and garlands are small businesses, according to the standards of the Small Business Administration (SBA). Nurseries with less than $3.5 million in sales are classified as small business by the SBA. Therefore, approximately 65 percent of all nurseries are considered small businesses. In addition, Christmas tree farms with less than $500,000 in sales are considered small businesses. Nationwide, more than 70 percent of Christmas tree farms are considered small businesses.

This rule would eliminate treatment and certification requirements for pine wreaths and garlands. This would save affected producers time and money and would facilitate the movement of these commodities. Specifically, the elimination of treatment requirements for pine wreaths and garlands moving out of quarantined areas would save affected producers an average of 1 percent of revenue generated from the sale of these commodities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.50–2, paragraph (a) would be revised to read as follows:

§ 301.50–2 Regulated articles.

* * * * *

(a) Pine products (*Pinus* spp.), as follows: Bark nuggets (including bark chips); Christmas trees; logs with bark attached; lumber with bark attached; nursery stock; raw pine materials for pine wreaths and garlands; and stumps.

* * * * *

3. In § 301.50–10, paragraph (b), up to and including the colon, and paragraph (c), up to the table, would be revised to read as follows:

§ 301.50–10 Treatments.

* * * * *

(b) Cold treatment is authorized for cut pine Christmas trees, pine nursery stock, and raw pine materials for pine wreaths and garlands as follows: * * *

(c) Any one of these fumigation treatments is authorized for use on cut pine Christmas trees and raw pine materials for pine wreaths and garlands. Cut pine Christmas trees and raw pine materials for pine wreaths and garlands may be treated with methyl bromide at normal atmospheric pressure as follows: * * *

Done in Washington, DC, this 14th day of December 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–33058 Filed 12–20–99; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 214, and 299

[INS No. 1991–99]

RIN 1115–AF56

Authorizing Collection of the Fee Levied on F, J, and M Nonimmigrant Classifications Under Public Law 104–208

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Immigration and Naturalization Service's (Service) regulations to: Establish a $95 fee, that schools and exchange visitor programs must collect and remit on behalf of F–1, J–1, and M–1 nonimmigrants who are subject to this

fee when they first register or enroll in school or first commence exchange program participation in the United States; explain which F–1, J–1; and M–1 nonimmigrants are required to pay the fee; describe the consequences that an F–1, J–1, or M–1 nonimmigrant faces upon failure to pay the fee; specify the consequences that an approved school or exchange program faces if it fails to collect the fee and remit it to the Service; and to specify which F–1, J–1, and M–1 nonimmigrants are exempt from the fee.

This rule is necessary to implement section 641 (regarding the Program to Collect Information Relating to Nonimmigrant Foreign Students and Other Exchange Program Participants) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), as well as the authority that the Service already has under sections 103 (regarding the Powers and Duties of the Commissioner of the Service) and 214 (regarding Admission of Nonimmigrants) of the Immigration and Nationality Act (Act) and under 31 U.S.C. 9701 and section 286(m) of the Act.

DATES: Written comments must be submitted on or before February 22, 2000.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please references INS No. 1991–99 on your correspondence. Comments are available at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Kristen L. Casa or Song Park, Program Analysts, or Maurice R. Berez, Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 415 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 514–3228.

SUPPLEMENTARY INFORMATION:

Who are F, J, and M Nonimmigrants?

The Act provides for the admission of different classes of nonimmigrants. The purpose of the nonimmigrant's intended stay in the United States determines his or her proper nonimmigrant classification. Some classifications permit the nonimmigrant's spouse and qualifying child(ren) to accompany the nonimmigrant to the United States, or to join the nonimmigrant here. To qualify, a child must be unmarried and under the age of 21.

The F–1 nonimmigrants are foreign nationals enrolled as students in Service-approved colleges, universities, seminaries, conservatories, academic high schools, private elementary schools, other academic institutions, and in language training programs in the United States. For the purposes of this regulation, the term school refers to all of these types of Service-approved institutions. An F–2 nonimmigrant is a foreign national who is the spouse or qualifying child of an F–1 student.

The J–1 nonimmigrants are foreign nationals who have been selected by a United States Information Agency (USIA) designated sponsor to participate in an exchange visitor program in the United States. A J–2 nonimmigrant is a foreign national who is the spouse or qualifying child of a J–1 exchange visitor.

The M–1 nonimmigrants are foreign nationals enrolled as students in Service-approved vocational or other recognized nonacademic institutions, other than in language training programs in the United States. The term school also encompasses those institutions attended by M–1 students for the purpose of this proposed rulemaking. An M–2 nonimmigrant is a foreign national who is the spouse or qualifying child of an M–1 student.

What are institutions of higher education and designated exchange visitor programs?

Section 641 of the IIRIRA refers to institutions of higher education approved by the Service in consultation with the Department of Education (ED) and exchange visitor programs designated by the USIA. In consultation with the ED and the USIA, the Service has determined definitions for the terms institution of higher education and designated exchange visitor program drawing on generally accepted definitions of these terms as well as definitions contained in the Higher Education Act and other Service and USIA regulations. For the purpose of this rule, institutions of higher education include those defined as such under section 101(a) of the Higher Education Act of 1965; designated exchange visitor programs are those entities designated pursuant to 22 CFR 514.6 by the USIA as authorized to bring nonimmigrants to the United States to participate in a program designated under section 101(a)(15)(J) of the Act and further designated by the Service for the mandated reporting process.

Why is the Service proposing to collect information relating to nonimmigrant foreign students and other exchange program participants?

On September 30, 1996, President Clinton signed into law the IIRIRA, Pub. L. 104–208, Division C. Subtitle D of Title VI of the IIRIRA amended the Act and added new statutory provisions relating to nonimmigrants admitted to or applying for classification under section 101(a)(15) (F), (J), and (M) of the Act. Section 641(a)(1) of the IIRIRA, in particular, directs the Attorney General, in consultation with the Secretary of State and the Secretary of Education, to develop and conduct a program to collect information on nonimmigrant foreign students and exchange visitors from approved institutions of higher education and designated exchange visitor programs.

Independent of the requirements of section 641 of the IIRIRA, the Service collects information on nonimmigrant students from educational institutions pursuant to the authority under sections 103 and 214 of the Act. These sections, that the Attorney General has delegated to the Service, give the Service authority to establish regulations governing the admission of nonimmigrants. Under this authority, the Service requires educational institutions to maintain records on nonimmigrant students and to provide information from the records to the Service upon request of the Service. To the extent that these record collection activities cause the Service to expend appropriated funds and yield particularized benefits to program participants, 31 U.S.C. 9701 requires the Service to assess a fee for providing the benefit.

This proposed rule, therefore, rests on the authority that the Service exercises under section 103 and 214 of the Act, as well as section 641 of the IIRIRA.

Who will be included in the program to collect information relating to nonimmigrant foreign students and other exchange program participants?

The Service intends to include F–1, J–1, and M–1 nonimmigrants at all educational levels in this program. Section 641 of the IIRIRA, by its terms, expressly applied this reporting program to F–1 and M–1 students enrolled in institutions of higher education and to J–1 exchange visitors in all USIA designated exchange visitor programs that the Attorney General selected for inclusion in the program. As noted, however, sections 103 and 214 of the Act also authorize the collection of this information. The Service anticipates that it will be better

able to serve all F–1, J–1, and M–1 immigrants as a result of this program. For example, the information to be collected will assist the Service and school or exchange visitor program in determining whether the F–1, J–1, or M–1 nonimmigrant has maintained his or her lawful nonimmigrant status. This information is important in the determination of the nonimmigrant's eligibility for permanent residence or other immigration benefits. Thus, the inclusion of all F–1, J–1, and M–1 nonimmigrants in this information collection program will benefit the nonimmigrants themselves, as well as schools, exchange visitor programs, and the Service.

It is the Service's desire to understand the needs and concerns of the educational community to the best of its ability while completely fulfilling its statutory requirements and obligations. The Service would encourage and welcome comment from the educational community regarding its proposal to include F–1, J–1, and M–1 nonimmigrants at all educational levels in this program.

Why is the Service proposing a fee?

Section 641(e) of the IIRIRA requires that a Service-approved institution of higher education and a USIA designated exchange visitor program shall impose and collect a fee from each F–1 and M–1 student and each J–1 exchange visitor identified under section 641(e)(3) of the IIRIRA to support the described information collection program. Just as section 641 of the IIRIRA is not the only statutory basis for this program, section 641(e) of the IIRIRA is not the only statutory basis for assessing a fee. Under 31 U.S.C. 9701, the Service must assess a fee for the participation in any program that affords a particular benefit to an identifiable recipient. As noted, the Service intends this program to benefit all F–1, J–1, and M–1 nonimmigrants by creating a process for verifying their satisfactory compliance with the conditions of their status. Since the program will benefit all of these nonimmigrants and the schools and exchange visitor programs in which they enroll, all F–1, J–1, and M–1 nonimmigrants, except those specifically identified in the proposed rule, will, pursuant to 31 U.S.C. 9701, be subject to the fee. Under the first exception, J–1 nonimmigrants who participate in exchange programs sponsored by the Federal Government will not have to pay the fee. This exception is required by section 641(e)(3) of the IIRIRA.

Under the second exception, the Service has determined that it should not impose the fee on F–1 and M–1 nonimmigrants who are enrolled in private academic high schools or in other approved schools that are not ''institutions of higher education'' as defined in section 101(a) of the Higher Education Act of 1965, as amended. (It should be noted that attendance of public elementary schools is prohibited for F–1 and M–1 nonimmigrants under section 625 of the IIRIRA. Therefore, public elementary schools are not addressed in this rulemaking.)

Section 641(e)(4)(B) of the IIRIRA does not clearly authorize the Service to deposit to the Examinations Fee Account the fees that would be paid under this proposed rule by schools on behalf of F–1 and M–1 students who are not enrolled in approved institutions of higher education. Exempting these students is consistent with 31 U.S.C. 9701 because the Service believes that the funds that could be collected from these nonimmigrants would not justify the costs of collecting and accounting for the fees.

The Service invites comments on how it plans to impose the mandated fee through this proposed rule. In addition, comments are invited regarding who will be subject to the fee and who may be exempt from the fee.

How will the Service handle the fees it collects?

The general principle, set forth in section 286(c) of the Act, is that, except for fees collected from persons living in Guam or the Virgin Islands, the Service, as the Attorney General's delegate, must deposit with the Department of Treasury as miscellaneous receipts all filing fees and other fees. Section 641(e)(4)(B) of the IIRIRA permits the Service, as the Attorney General's delegate, to deposit the fees that the Service would collect under this proposed rule into the Examinations Fee Account established under section 286(m) of the Act. Under section 641(h) of the IIRIRA, only those F–1 and M–1 nonimmigrants who are enrolled in approved institutions of higher education and those J–1 nonimmigrants who participate in designated exchange programs that the Service has selected for participation in the program are within the scope of section 641 of the IIRIRA. Since the Service has selected all approved institutions of higher education and all designated exchange programs for participation in this program, the Service will deposit to the Examinations Fee Account all fees paid under this proposed rule.

What variables were used in determining the fee?

The Service conducted a fee study that considered all of the costs incurred as a result of the foreign student and exchange visitor information collection program in order to determine the amount of the fee. Initially, section 641(e)(4)(A) of the IIRIRA sets the maximum permissible fee at $100. The amount of the proposed fee is $95. The amount of the fee is subject to change in the future based upon periodic review and analysis of the cost of conducting the information collection program, as required in section 641(f)(2) of the IIRIRA. The following discussion provides a description of the calculation of the fee.

The proposed fee was calculated based on the program and system costs and the estimated population base of covered fee payers. The calculated costs include those expenses incurred by the Government to develop, produce, deploy, operate, and maintain the program and system. In addition, the proposed fee will cover the costs associated with the creation and population of new positions required to support this program.

The revenue from the proposed fee will also cover the costs of technical and program support that the Government needs to administer benefits and to monitor schools, program sponsors, students, and exchange visitors solely for the purpose of this reporting program. In addition, a portion of the revenue from the proposed fee will be used for the direct support of Service operations relating to student and exchange visitor-related activities.

Program Costs

For the Fee Study, program costs were defined and organized into nonrecurring costs and recurring costs.

Nonrecurring Costs

The following include the nonrecurring costs that total $12.3 million:

• *Development:* Development costs are associated with designing and developing the new program and associated system. The system will utilize an Internet-based processing approach, with electronic data transfer and electronic ''event'' notifications, to maintain accurate electronic files on foreign students and exchange visitors. School and exchange sponsors will submit to the Service, via the Internet, ongoing electronic ''event'' notifications throughout the individual's program in the United States. These notifications, made electronically through the system,

will immediately inform the Service of changes in student or exchange visitor status. The system is ultimately expected to improve the timeliness for benefits processing as well as the accuracy of the information used for processing foreign students and exchange visitors from point of visa issuance, admission to the United States, and throughout the course of their stay in the United States while pursuing their program of education or exchange. System development will begin after successful completion of the operational prototype. The Service will incur system development costs from 1999 through 2001. These costs include system and application design, development, integration, applications testing, and verification and validation.

• *Deployment:* Deployment funds will be expended to deliver and install the new national system software at designated Service regional offices (SROs), district offices (DOs), service centers (SCs), ports-of-entry (POEs), Service Headquarters, DOS Headquarters and DOS Consular Posts, U.S. Information Service (USIS) Offices, and the United States Customs Service (USCS).

Development and deployment nonrecurring costs span several years beyond fiscal Year (FY) 2001 at varying funding levels. For example, the Service, in partnership with the USCS and DOS (including USIA functions merged into DOS), will incur deployment expenses in FY 2002 and FY 2003. Partnership with USCS is necessary as the Service shares information technology with that agency at POEs throughout the country, and deployment of the program would not be complete without linkage to these share systems. Subsequent fee studies will include cost projections for the years beyond FY 2001 and may result in an adjustment to the fee amount.

Recurring Costs

These recurring costs which total approximately $31 million are provided for the period October 1, 1999, through September 30, 2001 and consist of the following:

• *Service Personnel costs* include funding support staff at Service Headquarters, DOS Headquarters (for DOS and USIA expenditures relating to work performed by DOS and USIA personnel to meet this new Service requirement, including, but not limited to, USIA functions merged into DOS), Service field offices, and Help Desk customer support.

• *System Operations and Maintenance (O&M) costs* include expenses for ongoing operational support for the current operational electronic reporting prototype and a planned Beta test of the national electronic reporting program and system, including software and equipment maintenance, such as server maintenance.

• *Program operations* include those costs for full-scale Program operation, such as the Operations Help Desk, coordination with schools/programs, staffing Service offices and other Government agencies, and computer system processing. These costs include, but are not limited to, Service Headquarters and contract support.

• *Overhead costs* relate to the management and administrative (M&A) costs to support the planned electronic reporting program. Calculation of the student/exchange visitor program contribution is based upon comparing resources between the entire Service as an agency and the information collection program for foreign students and exchange visitors. An allocation was calculated based upon the proportion of the program resources to total Service resources.

The cost projections use FY 1999 through FY 2001 budget estimates as the base for determining the full cost to design and deploy the program.

The Service is estimating the fee as proposed in this rule to be $95, and invites comments on this proposed fee amount.

How was the user fee population base calculated?

The statute specifies that certain nonimmigrants are subject to the proposed fee as follows: students and exchange visitors in the F–1, J–1, and M–1 nonimmigrant categories. By statute, the only nonimmigrants exempted from the fee are J–1 exchange visitors who are participants in a program sponsored by the Federal Government and, as discussed above, the Service has also exempted F–1 and M–1 nonimmigrants enrolled in private elementary schools and public or private academic high schools. The remainder of nonimmigrants in the F–1, J–1, and M–1 nonimmigrant categories are subject to the proposed fee. For the purposes of this regulation, the only students and exchange visitors who will be required to pay the proposed fee will be those who have a program start date occurring on or after August 1, 1999.

In the user base calculation, the proposed fee is levied on new students and exchange visitors whose programs begin on or after August 1, 1999. In subsequent years, those initial students or exchange visitors who transfer into a new school, institution or program, or change program category will again pay the proposed fee to their new school, institution, or program for remittance on their behalf by the new school, institution or exchange visitor program. Upon transfer they will be paying as new students or exchange visitors in the new school, institution, program or category, together with the initial students and exchange visitors admitted each year. The user base, including all F–1, J–1, and M–1 nonimmigrants, was calculated to the approximately 251,000 in both FY 2000 and FY 2001. The total population for this 2-year period is 501,000 paying students and exchange visitors.

How were enrollment figures projected?

Available data was analyzed based on trends experienced by the Service in other programs as well as trends projected by the aggregate totals estimated for students and exchange visitors. The analysis also reflects the following assumptions.

• The student and exchange visitors population base will not change dramatically over the next 2 years (2000 and 2001).

• The data on the student and exchange visitor population found in the 1996 *Statistical Yearbook for the Immigration and Naturalization Service* and the Institute for International Education's (IIE) ''Open Doors 1996–1997'' publication are the best available data at present.

• The USIA-provided data on the exchange visitor population are the best available.

• A portion of the student/exchange visitor population is not subject to the proposed fee.

When must a school or exchange visitor program collect and remit the fee?

• For those F–1, J–1, and M–1 nonimmigrants who are subject to the fee and who first register at a school, commence participation in an exchange visitor program, transfer to a new school/program, or change exchange visitor category between August 1, 1999, and the date on which the Service publishes the final rule in the **Federal Register**, the fee must be collected and remitted to the Service by not later than the end of a grace period, to be specified by the Service, after the date of publication of the final rule. The Service invites comments and suggestions as to the amount of time that would constitute an adequate and reasonable grace period for students and exchange visitors who qualify as outlined above in this paragraph.

• For those F–1, J–1, and M–1 nonimmigrants who are subject to the

fee and who first register at a school, commence participation in an exchange visitor program, transfer to a new school/program, or change exchange visitor category after the date on which the Service publishes the final rule in the **Federal Register**, the fee must be collected and remitted to the Service not later than 90 calendar days from the first date cited in block 5 of the Form I–20 or block 3 of the Form IAP–66.

A detailed description and set of procedures delineating the entire payment remittance process, including the provision for a grace period as described above, and the definition of a valid form of payment will be provided in a **Federal Register** Notice that will be published concurrently with the final rule.

Under what circumstances must an F–1, J–1 or M–1 nonimmigrant pay the fee again?

The fee must be paid whenever a new Form I–20, Certificate of Eligibility for a Nonimmigrant Academic or Vocational Student, or a new Form IAP–66, Certificate of Eligibility for an Exchange Visitor, is issued by a Service approved school or a designated exchange program for any of the following purposes to an F–1, J–1, or M–1 nonimmigrant who is subject to the fee:

- Transfer to a new school/exchange visitor program;
- Commencement of a new program after completion of the initial program; or
- Change of exchange visitor category.

Under the above three circumstances, the proposed fee must be collected and remitted by the school or exchange visitor program not later than 90 days after:

- The report date indicated in block 5 of the new Form I–20, Certificate of Eligibility for Nonimmigrant Student Status, for F–1 and M–1 students, or
- The begin date indicated in block 3 of the new Form IAP–66, Certificate of Eligibility for Exchange Visitor Status, for J–1 exchange visitors.

Who is responsible for collection and remittance of the fee to the Service?

Section 641(e) of the IIRIRA stipulates that ''an approved institution of higher education and a designated exchange visitor program ''must collect the proposed fee from each F–1, J–1, and M–1 nonimmigrant who is subject to the fee and must then remit the fees to the Service. Each approved institution or program that is subject to this requirement, therefore, must actually collect and remit the fees. The Service recognizes that this aspect of the law gives rise to concerns among members of the educational community and other stakeholder groups. Predominant among these concerns are a perceived expansion in the role of the Designated School Official/Responsible Officer (DSO/RO) as an agent of the Federal Government, and the short timeline provided for public institutions to coordinate with State educational authorities and local governments to authorize them to assume the proposed fee collection and remittance responsibility.

To meet its responsibility under this proposal, the institution, school, or exchange program must:

- Establish a means to collect, remit, and account for all fees collected from nonimmigrants who are subject to the fee;
- Inform each F–1, J–1, or M–1 nonimmigrant who is subject to the fee of his/her obligation to pay the fee;
- Verify that a Form I–901 has been completed, either manually or electronically, by or in behalf of each F–1, J–1, or M–1 nonimmigrant who is subject to the fee;
- Collect the required fee from each F–1, J–1, or M–1 nonimmigrant who is subject to the fee;
- Remit the form and fee together to the Service in accordance with § 103.2(a); and
- Verify fee payment as a prerequisite for any and all administrative or benefit applications through the DSO/RO, or to the Service subsequent to commencement of the program.

For example, a DSO or RO must verify that any F–1, J–1, or M–1 nonimmigrant who is subject to the fee has paid the fee before the DSO or RO may take any of the following actions: endorsing a Form I–20 or Form IAP–66; recommending to the Service/USIA that a benefit be granted; or granting a benefit to a student/exchange visitor through authority that has been delegated by Government regulation. It should be noted that failure by a DSO or RO to comply with these requirements may constitute grounds for withdrawal of school approval or program designation under existing Service regulations at 8 CFR 214.4(a) and USIA regulations at 22 CFR 514.60.

The Service welcomes and encourages comment from the educational community on this entire regulation, particularly in regard to the proposed requirement that schools and exchange visitor programs collect and remit the fee. It is the Service's desire to understand and meet the needs of the educational community to the best of its ability while completely fulfilling its statutory requirements and obligations.

How will the fee be remitted to the Service?

Service-approved schools and USIA designated exchange visitor programs will collect the proposed fee when an F–1, J–1, or M–1 nonimmigrant who is subject to the fee first registers, enrolls, or transfers into a program of study at the school, or changes exchange visitor category, or begins participation in the designated exchange visitor program. If an F–1, J–1, or M–1 nonimmigrant who is subject to the fee transfers to a new school or program, or otherwise commences a new program or changes category, the nonimmigrant will once again be subject to the proposed fee, even if the same institution conducts the new program. The following instances are examples provided for reference:

- If a nonimmigrant F–1 student in a bachelor degree program at university ''A'' transfers to university ''B'' to continue to pursue his/her bachelors degree at university ''B,'' university ''B'' would be required to collect and remit the proposed fee on behalf of the F–1 student.
- Two additional examples would be if a nonimmigrant student completes his/her undergraduate course of studies, and then enters a graduate program at the same university, or if a J–1 exchange visitor changes category from a research scholar to a student at the same institution, the school, or exchange visitor program must again collect and remit the proposed fee on behalf of the described nonimmigrant.

Because section 641(e)(1) mandates that the Service receive the proposed fee through the school or exchange visitor program only at the time the nonimmigrant first registers or first commences participating in the exchange, the amount of the proposed fee will be set to recover the cost of providing the services related to section 641 of the IIRIRA, based on the average length of an F–1, J–1, or M–1 nonimmigrant's program in the United States. If a particular nonimmigrant leaves earlier, the Service will not refund the balance of the proposed fee.

Form I–901 will be available to schools and designated exchange programs from the Service's website. Valid payment of the fee is required in order for an F–1, J–1, or M–1 nonimmigrant who is subject to the fee to maintain status. However, payment of the proposed fee alone does not create or maintain F–1, J–1, or M–1 status for any nonimmigrant who is subject to the fee and who fails to comply fully with all applicable regulations under 8 CFR

214.2(f), 214.2(j), 214.2(m), and 22 CFR part 514.

Will the Service furnish a receipt to paying nonimmigrants?

Yes. As evidence of payment, a receipt will be furnished to both the institution or exchange visitor program collecting and remitting the fee as well as to each F–1, J–1, and M–1 nonimmigrant who is subject to and has paid the fee. The receipt must be retained and produced by the student, exchange visitor, school, or program upon request by the Service. A detailed description and set of procedures delineating the entire payment remittance process and definition of valid form of payment will be provided in a **Federal Register** Notice that will be published concurrently with the final rule.

What happens if a school or exchange visitor program fails to collect and remit the fee on behalf of an F–1, J–1, or M–1 nonimmigrant who is subject to the fee?

Failure to collect and remit the fee as required will result in the nonimmigrant's loss of status. For any nonimmigrant who is subject to the fee, formal reinstatement will be necessary in order to regain lawful nonimmigrant status as an F–1 or M–1 student and valid program status as a J–1 exchange visitor. Application for reinstatement should be conducted as prescribed at § 214.2(f)(16), 62 FR 19925, and § 214.2(m)(16) for F, J, and M nonimmigrants respectively.

In addition, a copy of the receipt evidencing payment of the fee must also be included as supporting evidence of valid status with all subsequent applications for benefits. This includes benefits authorized, recommended or endorsed by a DSO or RO as well as applications for benefits filed with the Service by an F–1, J–1, or M–1 nonimmigrant who is subject to the fee, and/or his/her dependents, or with USIA by a J–1 nonimmigrant and/or his/her dependents.

An F–1, J–1, or M–1 nonimmigrant who is subject to the fee would be required to provide a copy of his/her receipt evidencing payment of the proposed fee in order to apply for benefits that include, but are not limited to: change of status, authorization for curricular practical training, recommendation for and authorization of optional practical training, recommendation for employment authorization based on severe economic hardship, reduction in course load, extension in program length, authorization for off-campus employment, endorsement for academic training, and application for reinstatement.

Failure by an authorized institution or designated exchange visitor program to impose, collect, and remit the fee may also result in withdrawal of school approval from the Service to issue Form I–20 under 8 CFR 214.4(a) or termination of program designation by USIA under 22 CFR 514.60. The Service in cooperation with USIA may decide to review fee payer data against various government and school records to analyze compliance by schools, exchange programs, students, and exchange visitors. The Service may bill schools or exchange visitor sponsors for fees not remitted.

Who is exempt from the fee?

The only nonimmigrants in F, J, and M status exempt from the fee are:

- J–1 nonimmigrants who come to the United States as participants in programs sponsored by the Federal Government,
- F–1 and M–1 nonimmigrants enrolled in private elementary schools and public or private academic high schools, and
- F–2, J–2, and M–2 dependents.

If the fee is remitted in error by any nonimmigrant, it will not be refunded.

Regulatory Flexibility Act

The Commissioner, in accordance with the Regulatory Flexibility Act (15 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. The regulation levies an annual fee in the amount of $95 on nonimmigrant students and exchange visitors initially arriving or continuing a program in the United States. The volume of fee payers expected is approximately 251,000 in each of the first 2 years of program operation. The total projected revenues for each fiscal year, therefore, amount to approximately $24 million. Individuals as opposed to small businesses file these applications.

Unfunded Mandates Reform Act of 1995

This proposed 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 one year, and it will not significantly or uniquely effect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

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

Assessment of Regulatory Impact on the Family

As provided by section 654 of the 1999 Treasury and General Government Appropriations Act, Pub. L. 105–277, Division A, 101(h), 112 Stat. 2681–528, the Commissioner has determined that this proposed rule will not have an adverse impact on the strength or stability of the family.

Executive Order 12866

This proposed rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget (OMB) for review. While the economic impact of this proposed rule is expected to be an annual revenue approximately $23.87 million to the Service, such an impact does not meet the threshold to be considered economically significant as specified under Executive Order 12866.

Executive Order 13132

This proposed rule will not have substantial direct effects on the States, or the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism survey impact statement.

Executive Order 12988 Civil Justice Reform

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

Paperwork Reduction Act

The information required by the proposed Form I–901, Fee Remittance

Form for Certain F–1, J–1, and M–1 Nonimmigrants, is considered an information collection and subject to review and clearance under the Paperwork Reduction Act procedures. The information collection requirement contained in this rule has been submitted to the OMB under the Paperwork Reduction Act for review and approval. The OMB control number for this collection is contained in 8 CFR 299.5, Display of control numbers.

Since the rulemaking action needs to be completed in an expedited manner to comply with statutory mandates, the Service is providing for the review of the form I–901 as part of the proposed rule. Therefore, the Service solicits public comments for 60 days on the information collection requirement in order to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Service, in calculating the overall burden this requirement will place upon the public, estimates that approximately 251,000 forms will be submitted annually. The Service also estimates that it will take a given nonimmigrant approximately 19 minutes to comply with the requirements. This calculation amounts to 79,483 total burden hours.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, the Service has submitted a copy of this proposed rule to OMB for its review of the information requirement. Other organizations and individuals interested in submitting comments regarding this burden estimate or any aspect of this information collection requirement, including suggestions for reducing the burden should direct them to: Stuart Shapiro, OMB, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503, and Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. The comments or suggestions should be submitted within 60 days of publication of this rulemaking.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of Information, Privacy, Reporting and recordkeeping requirements.

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Reporting and recordkeeping requirements, Students.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be 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 adding the entry for ''Form I–901'' to the listing of fees, in proper numerical sequence, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

Form I–901. for remittance of the fee levied on specified F–1, J–1, and M–1 nonimmigrant aliens required under section 641(e) of Public Law 104–208—$95. This fee may not be waived.

* * * * *

PART 214—NONIMMIGRANT CLASSES

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

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR part 2.

4. Section 214.2 is amended by:

a. Adding a new paragraph (f)(17);

b. Adding a new paragraph (j)(5);

c. Adding a new paragraph (m)(18), to read as follows:

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

* * * * *

(f) * * *

(17) *Remittance of the fee.* (i) An F–1 nonimmigrant who begins a program of study at a Service-approved institution of higher education, as defined in section 101(a) of the Higher Education Act of 1965, as amended, on or after August 1, 1999, is subject to a fee payable to the Service. The fee and Form I–901, Fee Remittance Form for Certain F–1, J–1, and M–1 Nonimmigrants, will be collected and remitted to the Service by the school on behalf of the F–1 student. The fee will be due 90 days from publication of a final rule in the **Federal Register** or 90 days after the first date appearing in block 5 of the Form I–20, whichever date is later. An F–1 nonimmigrant described in paragraph (f)(17)(v) of this section is not subject to this fee.

(ii) A Service-approved school must collect the fee from an F–1 nonimmigrant described in paragraph (f)(17)(i) of this section when he or she first registers at the school and remits it directly to the Service in order for the F–1 student and his or her F–2 dependents to remain in lawful nonimmigrant status. Failure by the school to impose, collect, and remit the fee is conduct which does not comply with Service regulations and may cause the Service to initiate action to withdraw approval pursuant to § 214.4(a)(1)(v). Failure by such an F–1 student to pay the fee as required is a violation of status for the F–1 principal as well as any F–2 dependents, and neither the F–1 nor F–2 nonimmigrant will be considered to have gone out of status ''through no fault of his or her own'' or ''for technical reasons.'' Payment of the fee does not, however, preserve the lawful status of any F–1 or F–2 nonimmigrant who has violated his or her status in some other way.

(iii) Any F–1 student who is out of status for late payment or nonpayment of the required fee must also apply for reinstatement as provided under paragraph (f)(16) of this section. The Form I–539, Application to Extend Status/Change Nonimmigrant Status, must be submitted together with a copy of a valid receipt from the Service as evidence of having paid the fee in order to be eligible to apply for reinstatement to F–1 status. Approval of the Form I–539 also reinstates the status of any F–2 dependents.

(iv) If an F–1 nonimmigrant is subject to the fee, the F–1 nonimmigrant and his/her F–2 dependents must present a copy of the receipt evidencing payment

of the fee in order to be eligible for any benefit endorsed or authorized by a DSO or with applications for benefits filed with the Service by the F–1 nonimmigrant and/or his/her dependents, including change of status. A DSO's failure to verify that an F–1 nonimmigrant who is subject to the fee has paid the fee before endorsing or authorizing any application for benefits is conduct which does not comply with Service regulations and may cause the Service to initiate action to withdraw approval pursuant to § 214.4(a)(1)(v). If an F–1 nonimmigrant subject to this fee transfers to a new institution of higher education or begins a new program at the same institution, the F–1 nonimmigrant must pay the fee when the F–1 nonimmigrant begins studies at the new institution or in the new program.

(v) An F–1 nonimmigrant is not subject to the requirements of this paragraph if the F–1 nonimmigrant is enrolled in a private elementary school or a public or private academic high school in the United States.

* * * * *

(j) * * *

(5) *Remittance of the fee.* (i) A nonimmigrant in J–1 status commencing participation in a USIA-designated exchange visitor program on or after August 1, 1999, is subject to a fee payable to the Service. The fee and Form I–901, Fee Remittance Form for Certain F–1, J–1, and M–1 Nonimmigrants, will be collected and remitted to the Service by the exchange visitor program on behalf of the J–1 exchange visitor. The fee will due 90 days from publication of the final rule in the **Federal Register** or 90 days after the first date appearing in block 3 of the Form IAP–66, whichever date is later. A J–1 nonimmigrant described in paragraph (j)(5)(v) of the section is not subject to this fee.

(ii) A designated exchange visitor program must collect the fee from a J–1 nonimmigrant who is subject to the fee described in paragraph (j)(5)(i) of this section in order for the J–1 exchange visitor and his or her J–2 dependents to remain in valid program status. Failure by such a J–1 exchange visitor to pay the fee as required is a violation of valid J–1 program status for the J–1 principal as well as any J–2 dependents, and neither the J–1 principal nor the J–2 dependents will be considered to have gone out of status ''through no fault of his or her own'' or ''for technical reasons.'' Payment of the fee does not, however, preserve the lawful status of any J–1 or J–2 nonimmigrant who has violated his or her status in some other way. Failure by the exchange visitor program to attempt to collect and remit the fee may cause the Service to request the USIA to terminate program designation pursuant to 22 CFR 514.60.

(iii) Any J–1 exchange visitor who is out of program status for late payment or nonpayment of the required fee must also apply for reinstatement as provided under 22 CFR Part 514. The application or request for reinstatement to valid program status must be submitted to the USIA together with a copy of a valid receipt from the Service as evidence of having paid the fee in order to be eligible to apply for reinstatement to valid J–1 program status. Reinstatement of the J–1's status also reinstates the status of any J–2 dependents.

(iv) If a J–1 nonimmigrant is subject to the fee, the J–1 nonimmigrant and his/her J–2 dependents must present a copy of the receipt evidencing payment of the fee with all subsequent benefits endorsed or authorized by an RO as well as applications for benefits filed with the Service or USIA by the J–1 nonimmigrant and/or his/her dependents, including change of status. If a J–1 nonimmigrant transfers to a new exchange visitor program, or to a different exchange visitor program or category at the same institution, the J–1 nonimmigrant must pay the fee when participation at the new institution or in the new program or category commences.

(v) A J–1 nonimmigrant is not subject to the requirements of this paragraph if the J–1 nonimmigrant comes to the United States as a participant in a program sponsored by the Federal Government.

* * * * *

(m) * * *

(18) *Remittance of the fee.* (i) An M–1 nonimmigrant who begins a program of study at a Service-approved institution of higher education, as defined by section 101(a) of the Higher Education Act of 1965, as amended, on or after August 1, 1999, is subject to a fee payable to the Service. The fee and Form I–901, Fee Remittance Form for Certain F–1, J–1, and M–1 Nonimmigrants, will be collected and remitted to the Service by the school on behalf of the M–1 student. The fee will be due 90 days from publication of the final rule in the **Federal Register** or 90 days after the first date appearing in block 5 of the Form I–20, whichever date is later. An M–1 nonimmigrant described in paragraph (m)(18)(v) of this section is not subject to the is fee.

(ii) A Service-approved school must collect the fee from an M–1 nonimmigrant described in paragraph (m)(18)(i) of this section and remit it directly to the Service in order for an M–1 student and any M–2 dependents to remain in lawful nonimmigrant status. Failure by the school to impose, collect, and remit the fee is conduct that does not comply with Service regulations, and may cause the Service to initiate action to withdraw approval pursuant to § 214.4(a)(1)(v). Failure by such an M–1 student to pay the fee as required is a violation of status for the M–1 principal as well as any M–2 dependents, and neither the M–1 student nor any M–2 dependent will be considered to have gone out of status ''through no fault of his or her own'' or ''for technical reasons.'' Payment of the fee does not, however, preserve the lawful status of any M–1 or M–2 nonimmigrant who has violated his or her status in some other way.

(iii) Any M–1 student who is out of status for late payment or nonpayment of the required fee must also apply for reinstatement as provided under paragraph (m)(16) of this section. The Form I–539, Application to Extend Status/Change Nonimmigrant Status, must be submitted together with a copy of a valid receipt from the Service as evidence of having paid the fee for all applicable programs in order to be eligible to apply for reinstatement to M–1 status. Approval of the Form I–539 also reinstates the lawful status of any M–2 dependents.

(iv) If an M–1 nonimmigrant is subject to this fee, the M–1 nonimmigrant and his/her M–2 dependents must include a copy of the receipt evidencing payment of the fee with all subsequent requests for benefits endorsed or authorized by a DSO as well as applications for benefits filed with the Service by the M–1 nonimmigrant and/or his/her dependents, including change of status. A DSO's failure to verify that an M–1 nonimmigrant who is subject to the fee has paid the fee before endorsing or authorizing any application for benefits is conduct which does not comply with Service regulations and may cause the Service to initiate action to withdraw approval pursuant to § 214.4(a)(1)(v). If an M–1 nonimmigrant transfers to a new institution of higher education, or begins a new program at the same institution, the M–1 nonimmigrant must pay the fee when the M–1 nonimmigrant begins training at the new institution or in the new program.

(v) An M–1 nonimmigrant is not subject to the requirements of this paragraph if the M–1 nonimmigrant is enrolled in a private elementary school

or a public or private academic high school in the United States.

* * * * *

PART 299—IMMIGRATION FORMS

5. The authority citation for part 299 continues to read as follows:

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

6. Section 299.1 is amended in the table by adding, in proper numerical sequence, the entry for From ''I–901'' to read as follows:

§ 299.1 Prescribed forms.

Form No.	Edition date	Title
*	*	*
I–901	XXXXX	Remittance of the fee required for certain F–1, J–1, and M–1 nonimmigrant aliens.

* * * * *

6. Section 299.5 is amended in the table by adding, in proper numerical sequence, the entry for Form ''I–901'' to read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS Form No.	INS form title	Currently assigned OMB control No.
*	*	*
I–901	Remittance of the fee required for certain F–1, J–1, and M–1 non-immigrant aliens.	1115–

* * * * *

Dated: December 14, 1999.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 99–32842 Filed 12–20–99; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 71 and 73

RIN 3150–AG41

Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is considering an amendment to its regulations that would require NRC licensees to notify Native American Tribes of shipments of certain types of high-level radioactive waste, including spent nuclear fuel, prior to transport to or across the boundary of Tribal lands. Current NRC regulations require advance notification of these shipments to States. In recognition of Tribal sovereignty and the need for Tribes to be informed about activities that occur on Tribal lands, the NRC seeks to extend these regulations to include advance notification of these shipments to Federally recognized Native American Tribes. This advance notice of proposed rulemaking is issued to invite early input from affected parties and the public on the issue of advance notification.

DATES: The comment period expires March 22, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail comments to: The Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website (http://ruleforum.llnl). 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 site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These same documents also may be viewed and downloaded electronically via the rulemaking website.

FOR FURTHER INFORMATION CONTACT: Tony DiPalo, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6191, e-mail AJD@nrc.gov or Stephanie R. Martz, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1520, e-mail SRM1@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

Current NRC regulations require that licensees inform State governors of certain radioactive waste shipments passing through or across the boundary of the State.

In particular, 10 CFR 71.97 requires advance notification to States of shipments of certain types of radioactive waste and small quantities of irradiated reactor fuel. The types of shipments covered by the Part 71 notification requirements are specified in 10 CFR 71.97(b).

In 10 CFR 73.37, advance notification to States of shipments of certain quantities of irradiated reactor fuel is required. The notification requirements in Part 73 apply to most shipments of irradiated reactor fuel. The types of shipments covered by the Part 73 notification requirements are detailed in 10 CFR 73.37(a). NRC regulations (10 CFR 73.37(g)) require State officials and other individuals to protect schedule information related to these fuel shipments from unauthorized disclosure as specified in 10 CFR 73.21. The NRC was directed to promulgate these regulations by the NRC Authorization Act for Fiscal Year 1980 (Sec. 301(a), Pub. L. 96–295).

In accordance with the notification procedures in Part 71, a licensee must notify the governor of a State, or the governor's designee, in writing, prior to a shipment of radioactive waste or nuclear fuel. If the notification is delivered by mail, it must be postmarked at least 7 days before the beginning of the 7-day period during which it is estimated that the shipment will depart from its point of origin. If the notification is hand-delivered, it must be delivered at least 4 days before the beginning of the 7-day period during which it is estimated that the shipment will depart from its point of origin.

In accordance with 10 CFR 71.97, a list of the names and mailing addresses of the governor's designees receiving advance notification is published in the **Federal Register** and is updated on a

yearly basis (see, *e.g.,* 64 FR 35197 (June 30, 1999)).

The notification for shipments under Part 71 must contain the following information:

(1) The name, address, and telephone number of the shipper, carrier, and receiver of the irradiated reactor fuel or nuclear waste shipment;

(2) A description of the irradiated reactor fuel or nuclear waste contained in the shipment;

(3) The point of origin of the shipment and the 7-day period during which the shipment is estimated to depart;

(4) The 7-day period during which the shipment is estimated to arrive at the State boundary;

(5) The shipment's destination and the 7-day period during which the shipment is estimated to arrive at its destination; and

(6) A point of contact, with a telephone number, for current shipment information.

If the schedule of the shipment changes by more than 6 hours from the information furnished, the licensee must notify the governor or the governor's designee (''the responsible party'') of the schedule change by telephone (or other means), and must inform the responsible party of the number of hours that the schedule has changed (*i.e.*, advanced or delayed) relative to the previously furnished information.

The notification for shipments under 10 CFR 73.37(f)(2) must contain the following information:

(1) The name, address, and telephone number of the shipper, carrier, and receiver;

(2) A description of the shipment;

(3) A listing of the routes to be used within the State; and

(4) A statement that certain information, which is provided as a separate enclosure to the written notification, is required by NRC regulations in 10 CFR 73.21 to be protected as Safeguards Information.

The information to be provided as a separate enclosure to the notification under Part 73 is as follows:

(1) The estimated date and time of departure from the point of origin of the shipment;

(2) The estimated date and time of entry into the State;

(3) For a single shipment whose schedule is not related to the schedule of any subsequent shipment, a statement that schedule information must be protected in accordance with the provisions of 10 CFR 73.21, as Safeguards Information, until at least 10 days after the shipment has entered or originated within the State; and

(4) For a shipment in a series of shipments whose schedules are related, a statement that schedule information must be protected in accordance with the provisions of 10 CFR 73.21, as Safeguards Information, until at least 10 days after the last shipment in the series has entered or originated within the State, and an estimate of the date on which the last shipment in the series will enter or originate within the State.

To help minimize the possibility for radiological sabotage, schedules and itineraries for shipments of irradiated reactor fuel under Part 73 are required to be protected as Safeguards Information. State officials, State employees, and other responsible parties who receive schedule information are required to protect that information from unauthorized disclosure under 10 CFR 73.21 and 73.37(g). Title 10 of the Code of Federal Regulations, 10 CFR 73.21(a), stipulates that information protection procedures employed by State and local police forces are deemed to meet the information protection measures specified in 10 CFR 73.21(b) through (i). Title 10 of the Code of Federal Regulations, 10 CFR 73.21(c), specifically limits information disclosure except to persons with an established ''need to know.'' For State and local governments, these persons are either the governor, the governor's designated representative, or a member of a State or local law enforcement authority that is responsible for responding to requests for assistance during safeguards emergencies. Title 10 of the Code of Federal Regulations, 10 CFR 73.21(d), prescribes protection required while the information is being used or stored, and 10 CFR 73.21(g) specifies the protection required when the information is transmitted outside an authorized place of use or storage. With respect to the provision of 10 CFR 73.37(f)(4) that the governor's representative be notified in the event of a change in the schedule, NRC policy is that the licensee need notify only a single designated individual within each State (47 FR 600; January 6, 1982).

Further information regarding NRC's transportation requirements can be found in NUREG–0725, ''Public Information Circular for Shipments of Irradiated Reactor Fuel,'' Revision 13, October 1998. Single copies are available for purchase from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

Specific Proposal

The Commission is considering amending Parts 71 and 73 to require that licensees provide timely advance notification to Native American Tribes prior to transport of certain types of nuclear waste, including spent fuel, to or across the boundary of Tribal lands. This amendment would require licensees to provide to the Native American Tribes notification similar to that now required to be provided to the States.

In 1994, the U.S. Department of Energy (DOE) notified the NRC of its intent to implement its Tribal notification policy for DOE's shipments of spent nuclear fuel and high-level radioactive waste. DOE presently accomplishes these shipments under DOE regulations. An amendment to NRC regulations would clarify how DOE, when making shipments under NRC regulations, and NRC licensees would provide notification to Native American Tribes of spent nuclear fuel and high-level radioactive waste shipments that pass to or across the boundary of Tribal lands. Such an amendment would advance NRC's efforts to recognize the sovereignty of Federally recognized Native American Tribes in accordance with President Clinton's 1994 memorandum entitled, ''Government-to-Government Relations with Native American Tribal Governments.'' [59 FR 22951; May 4, 1994] This memorandum states, in part,

> The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty.

The President's memorandum does not impose any new obligations on NRC, as an independent regulatory agency, or on other Executive departments and agencies. However, this memorandum encourages Federal agencies, among other things, to consult with Tribal governments, before engaging in activities that may affect Tribes, and to remove any procedural impediments to agencies being able to work directly with Tribal governments.

To accomplish this, the memorandum encourages each Executive department and agency to ''apply the requirements of Executive Order Nos. 12875 (''Enhancing the Intergovernmental Partnership'') and 12866 (''Regulatory Planning and Review'') to design solutions and tailor Federal programs, in appropriate circumstances, to address specific or unique needs of tribal communities.''

The primary purpose of the rule contemplated by the Commission would be to inform Native American Tribes of shipments passing to or across the boundary of Tribal lands as a recognition of Tribal sovereignty as well as the need for Tribes to be aware of activities that occur on Tribal lands. While emergency preparedness would not be the main reason for developing such a rule, Tribes that do have emergency preparedness capabilities would benefit from notification.

Specific Considerations

Before the NRC prepares a proposed rule on the subject, the NRC is seeking advice and recommendations on this matter from all interested persons. Comments accompanied by supporting reasons are particularly requested on the following questions arranged by topic:

A. Developing a List of Native American Tribe Contacts

A.1. In preparing the list of Tribal contacts, the NRC would most likely look to the list of Federally recognized Native American Tribes maintained by the Bureau of Indian Affairs (BIA), U.S. Department of the Interior. Is this an appropriate approach? Are there any other sources that the NRC should consider? (See the BIA website at http://www.doi.gov/bureau-indian-affairs.html).

A.2. How can the NRC ensure that contact information is kept current, particularly for smaller Tribes? In maintaining State contacts, the NRC provides each State with the opportunity to update its information annually. Should NRC follow the same approach for Tribal contacts?

A.3. How can licensees effectively and efficiently provide notification to Native American Tribes, particularly smaller Tribes, of a schedule change that would require updated notification by telephone at any time of day?

B. Minimizing the Licensees' Administrative Burden

B.1. In what ways can licensees comply with this advance notification requirement, while keeping their administrative burden at a minimum?

B.2. If a shipper is unable to make contact with a Tribe prior to or during a shipment, should the shipment proceed?

C. Identifying the Location of Tribes Along Shipment Routes

C.1. How can licensees effectively and comprehensively identify the location of Native American Tribes along a particular vehicle, rail, or vessel shipment route?

C.2. Should DOE and NRC licensees develop and maintain a central data base regarding the location of Tribal lands? Should NRC look to Geographic Information System (GIS) resources to provide licensees with information regarding the location of Tribal lands?

C.3. What types of Tribal lands should the rule apply to (*e.g.,* Trust Lands, Fee Lands (*i.e.,* lands owned by Native Americans but not held in trust by the Federal government), *etc.*)?

D. Safeguards Information

D.1. Should advance notification of spent fuel shipments be provided to any federally recognized Native American Tribe when spent fuel shipments are transported to or across tribal boundaries?

D.2 The NRC's ''need-to-know'' requirement for advance notification of spent fuel shipment information is found in 10 CFR 73.21. Should this requirement be broadened to include other entities, such as Federally recognized Native American Tribes?

D.3. Does wider dissemination of shipment information increase the risk to safeguarding spent fuel shipments (*i.e.,* protecting public health and safety)? How should the NRC address any increase in risk compared with the benefits to be gained from Tribal notification?

D.4. How should the rule address the point of contact for Safeguards Information in the context of Tribal notification?

D.5. A recipient of Safeguards Information must expend resources to ensure the information is handled properly. Are there Tribes who may not wish to be recipients of Safeguards Information?

D.6. If a Tribal government receives Safeguards Information, should the NRC review the Tribe's actions to control and protect Safeguards Information?

D.7. 10 CFR 73.21(a) states that ''information protection procedures employed by State and local police forces are deemed to meet the information protection requirements of § 73.21(b) through (i).'' Should the NRC determine the ability of Tribal governments to protect Safeguards Information and, if so, how?

D.8. Should the contemplated rule include an exemption to the notification requirement if there is reason to believe that a Tribe will not be able to protect the Safeguards Information from disclosure? What basis would the NRC need for granting such an exemption?

D.9. Should 10 CFR 73.37(f) be changed to a permissive form? That is, should the licensee be permitted rather than required to release Safeguards Information to responsible Tribal government officials?

The preliminary views expressed in this notice may change in light of comments received. If the proposed rule is developed by the Commission, there will be another opportunity for additional public comment in connection with that proposed rule.

List of Subjects

10 CFR Part 71

Criminal penalties, Hazardous materials transportation, Nuclear materials, Packaging and containers, Reporting and recordkeeping requirements.

10 CFR Part 73

Criminal penalties, Hazardous materials transportation, Exports, Imports, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, and Security measures.

The authority citation for this document is: 42 U.S.C. 2201; 42 U.S.C. 5841.

Dated at Rockville, Maryland, this 14th day of December, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–32929 Filed 12–20–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–56–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2, A300–B2K, A300 B4–2C, A300 B4–100, and A300 B4–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Airbus Model A300 B2, A300 B2K, A300 B2–200, A300 B4, A300 B4–100, and A300 B4–200 series airplanes, that currently requires certain structural inspections and modifications. This action would require that those inspections be accomplished on additional airplanes. This action also would require new repetitive inspections for airplanes in

certain configurations at revised thresholds and intervals. 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 and cracking of the wings and fuselage, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by January 20, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–56–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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this 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 98–NM–56–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. 98–NM–56–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 10, 1996, the FAA issued AD 96–08–08, amendment 39–9574 (61 FR 18661, April 29, 1996), applicable to all Airbus Model A300 B2, A300 B2K, A300 B2–200, A300 B4, A300 B4–100, and A300 B4–200 series airplanes, to require structural inspections and modifications. That action was prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their economic design goal. These incidents have jeopardized the airworthiness of the affected airplanes. The requirements of that AD are intended to prevent degradation of the structural capability of the affected airplanes.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, Airbus has issued Revision 6 of Airbus Service Bulletin A300–53–0162, dated March 20, 1996. The inspections and modifications described in Revision 6 of the service bulletin are identical to those in Revisions 4 and 5 of the service bulletin (which were referenced in AD 96–08–08 as appropriate sources of service information). However, the effectivity listing of Revision 6 of the service bulletin has been revised to include airplanes on which Airbus Modifications 3275 and 5724 or Airbus Service Bulletin A300–53–0161 has been accomplished (i.e., Configuration 2 airplanes). The remaining affected airplanes (Configuration 1) were subject to the requirements of AD 96–08–08.

Airbus also has issued Service Bulletin A300–53–0278, Revision 2, dated November 10, 1995, which describes procedures for inspections of an additional area between fuselage frames FR10 and FR10A. The actions in Revision 2 are similar to those described in the original version and Revision 1 of Service Bulletin A300–53–278 (the service bulletin number was revised in Revision 2 to A300–53–*0*278), which were referenced in AD 96–08–08 as appropriate sources of service information; except, the inspections have been revised from eddy current inspections to visual inspections. In addition, the effectivity listing of Revision 2 of the service bulletin has been revised to include airplanes on which Airbus Modification 1446 has been accomplished (i.e., Configuration 3 airplanes). The remaining affected airplanes (Configurations 1 and 2) were subject to the requirements of AD 96–08–08.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 90–222–116(B)R4, dated March 27, 1996, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France 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 DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 96–08–08 to continue to require certain structural inspections and modifications. The proposed AD would require that those inspections be accomplished on additional airplanes. The proposed AD also would require new repetitive inspections for airplanes in certain configurations at revised thresholds and intervals. The new actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletins specify that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Cost Impact

There are approximately 13 airplanes of U.S. registry that would be affected by this proposed AD.

The actions that were previously required by AD 96–08–08, and retained in this AD, take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $120 per airplane, per inspection cycle.

The new inspection that is proposed in this AD action would take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $180 per airplane, per inspection cycle.

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 39–9574 (61 FR 18661, April 29, 1996), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 98–NM–56–AD. Supersedes AD 96–08–08, Amendment 39–9574.

Applicability: All Model A300 B2, A300 B2K, A300 B2–200, A300 B4–2C, A300 B4–100, and A300 B4–200 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 otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) 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 corrosion and cracking of the wings and fuselage, which could result in reduced structural integrity of the airplane, accomplish the following:

Inspection and Modification

(a) Accomplish the inspections and modifications contained in the Airbus service bulletins listed below prior to or at the thresholds identified in each of those service bulletins, or within 1,000 landings or 12 months after April 13, 1992 (the effective date of AD 92–02–09, amendment 39–8145), whichever occurs later, except as provided in paragraph (d) of this AD for the service bulletin identified in paragraph (a)(8) of this AD. Required inspections shall be repeated thereafter at intervals not to exceed those specified in the corresponding service bulletin for the inspection. After April 13, 1992 (the effective date of AD 92–02–09, amendment 39–8145), the actions shall only be accomplished in accordance with the latest revision of the service bulletins specified.

(1) Airbus Service Bulletin A300–53–103, Revision 4, dated June 30, 1983; or Revision 5, dated February 23, 1994;

(2) Airbus Service Bulletin A300–53–126, Revision 7, dated November 11, 1990; or Revision 8, dated September 18, 1991;

(3) Airbus Service Bulletin A300–53–146, Revision 7, dated April 26, 1991;

Note 2: Airbus Service Bulletin A300–53–146 provides for a compliance threshold of within 5 years after the date of issuance of French airworthiness directive 90–222–116(B), issued on December 12, 1990, the accomplishment of which is required by AD 85–07–09, amendment 39–5033.

(4) For Configuration 1 airplanes identified in Airbus Service Bulletin A300–53–0162, Revision 6, dated March 20, 1996: Airbus Service Bulletin A300–53–162, Revision 4, dated November 12, 1990; Revision 5, dated March 17, 1994; or Revision 6, dated March 20, 1996. After the effective date of this new AD, only Revision 6 of the service bulletin shall be used.

(5) Airbus Service Bulletin A300–53–196, Revision 1, dated November 12, 1990; as amended by Service Bulletin Change Notice 1.A., dated February 4, 1991, or Revision 2, dated March 17, 1994.

Note 3: Airbus Service Bulletin A300–53–196 provides for a compliance threshold of within 6,000 landings after accomplishment of Airbus Service Bulletin A300–53–194, accomplishment of which is required by AD 87–04–12, amendment 39–5536.

(6) Airbus Service Bulletin A300–53–225, Revision 2, dated May 30, 1990;

(7) Airbus Service Bulletin A300–53–226, Revision 4, dated November 12, 1990; or Revision 5, dated September 7, 1991;

Note 4: Airbus Service Bulletin A300–53–226 provides for a compliance threshold of within 5 years after the issuance of French airworthiness directive 90–222–116(B), issued on December 12, 1990; but not later than 20 years after first delivery; the accomplishment of which is required by AD 90–03–08, amendment 39–6481.

(8) For Configuration 1 and 2 airplanes identified in Airbus Service Bulletin A300–53–0278, Revision 2, dated November 10, 1995: Airbus Service Bulletin A300–53–278, dated November 12, 1990; or Revision 1, dated March 17, 1994;

(9) Airbus Service Bulletin A300–54–045, Revision 4, dated January 31, 1990; or Revision 6, dated February 25, 1994;

(10) Airbus Service Bulletin A300–54–060, Revision 2, dated September 7, 1988, and Change Notice 2.A., dated February 13, 1990; or Revision 3, dated February 25, 1994;

(11) Airbus Service Bulletin A300–54–063, Revision 1, dated April 22, 1987, and Change Notice 1.A., dated February 13, 1990; or Revision 2, dated February 25, 1994; and

(12) Airbus Service Bulletin A300–54–066, Revision 1, dated February 15, 1989, and

Change Notice 1.A., dated February 13, 1990; or Revision 2, dated February 25, 1994.

(b) Accomplish the inspections and modifications contained in the Airbus service bulletins listed below prior to or at the thresholds identified in each of those service bulletins, or within 1,000 landings or 12 months after March 29, 1996 (the effective date of AD 96–08–08, amendment 39–9574), whichever occurs later. Required inspections shall be repeated thereafter at intervals not to exceed those specified in the corresponding service bulletin for the inspection.

(1) Airbus Service Bulletin A300–57–0194, Revision 2, including Appendix 1, dated August 19, 1993;

Note 5: Airbus Service Bulletin A300–57–0194 provides for a compliance threshold of prior to the accumulation of 36,000 landings for Model A300 B2 series airplanes on which the modification described in Airbus Service Bulletin A300–57–165 has not been accomplished and for Model A300 B2 series airplanes on which that modification has been accomplished prior to the accumulation of 24,000 landings on the airplane. Airbus Service Bulletin A300–57–0194 also provides for a compliance threshold of prior to the accumulation of 12,000 landings after the accomplishment of Airbus Service Bulletin A300–57–165 (for Model A300 B2 series airplanes on which the modification described in Airbus Service Bulletin A300–57–165 has been accomplished on or after the accumulation of 24,000 landings on the airplane).

(2) Airbus Service Bulletin A300–57–166, Revision 3, including Appendix 1, dated July 12, 1993;

(3) Airbus Service Bulletin A300–57–0167, Revision 1, including Appendix 1, dated May 25, 1993;

(4) Airbus Service Bulletin A300–57–0168, Revision 3, including Appendix 1, dated November 22, 1993;

(5) Airbus Service Bulletin A300–57–0180, Revision 1, dated March 29, 1993;

(6) Airbus Service Bulletin A300–57–0185, Revision 1, including Appendix 1, dated March 8, 1993; and

Note: 6: The Airbus service bulletins specified in paragraphs (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6) of this AD provide for a compliance threshold of prior to the accumulation of 36,000 landings (for Model A300 B2 series airplanes); 30,000 landings (for Model A300 B4–100 series airplanes); and 25,000 landings (for Model A300 B4–200 series airplanes) after the effective date of French airworthiness directive 93–154–149(B), issued on September 15, 1993.

(7) Airbus Service Bulletin A300–54–0084, dated April 21, 1994.

(c) For Configuration 2 airplanes identified in Airbus Service Bulletin A300–53–0162, Revision 6, dated March 20, 1996: Accomplish the inspections contained in Airbus Service Bulletin A300–53–0162, Revision 6, dated March 20, 1996, prior to or at the thresholds identified in the service bulletin; or within 1,000 landings or 12 months after the effective date of this AD, whichever occurs later. Required inspections shall be repeated thereafter at intervals not to exceed those specified in the service bulletin for the inspection.

(d) For Configuration 1 and 2 airplanes identified in Airbus Service Bulletin A300–53–0278, Revision 2, dated November 10, 1995: Accomplish the inspections contained in Airbus Service Bulletin A300–53–0278, Revision 2, dated November 10, 1995; at the time specified in paragraph (d)(1) or (d)(2) of this AD, as applicable. Repeat the inspections thereafter at intervals not to exceed 3,600 flight cycles. Accomplishment of the inspections required by this paragraph constitutes terminating action for the inspections required by paragraph (a)(8) of this AD.

(1) For airplanes that have not been inspected in accordance with paragraph (a) and (a)(8) of this AD prior to the effective date of this AD: Inspect at the time specified in paragraph (d)(1)(i) or (d)(1)(ii) of this AD, as applicable.

(i) For Configuration 1 airplanes: Prior to the accumulation of 18,300 total landings, or within 1,000 landings or 12 months after the effective date of this AD, whichever occurs later.

(ii) For Configuration 2 airplanes: At the earlier of the times specified in paragraphs (d)(1)(ii)(A) or (d)(1)(ii)(B) of this AD.

(A) At the time specified in paragraphs (a) and (a)(8) of this AD.

(B) Prior to the accumulation of 22,000 total landings, or within 1,000 landings or 12 months after the effective date of this AD, whichever occurs later.

(2) For airplanes that have been inspected in accordance with paragraph (a) and (a)(8) of this AD prior to the effective date of this AD: Perform the next inspection within 3,600 landings after accomplishing the last inspection, or within 1,000 landings or 12 months after the effective date of this AD, whichever occurs later.

(e) For Configuration 3 airplanes identified in Airbus Service Bulletin A300–53–0278, Revision 2, dated November 10, 1995: Accomplish the inspections contained in Airbus Service Bulletin A300–53–0278, Revision 2, dated November 10, 1995, prior to the accumulation of 26,000 total flight cycles; or within 1,000 landings or 12 months after the effective date of this AD, whichever occurs later. Repeat the inspections thereafter at intervals not to exceed 5,000 flight cycles.

Note 7: Accomplishment of the inspections specified in Airbus Service Bulletin A300–53–0278, Revision 2, dated November 10, 1995, is considered acceptable for compliance with the significant structural details (SSD) inspection 536206 of ''Airbus Industrie A300 Supplemental Structural Inspection Document'' (SSID), Revision 2, dated June 1994, required by AD 96–13–11, amendment 39–9679 (61 FR 35122, July 5, 1996).

Corrective Action

(f) If any discrepant condition identified in any service bulletin referenced in this AD is found during any inspection required by this AD, prior to further flight, accomplish the corresponding corrective action specified in the service bulletin, except as specified in paragraph (g) of this AD.

(g) If any crack is found during any inspection required by this AD; and the applicable service bulletin specifies to contact Airbus for appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the DGAC (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(h) 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 8: 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

(i) 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 9: The subject of this AD is addressed in French airworthiness directive 90–222–116(B)R4, dated March 27, 1996.

Issued in Renton, Washington, on December 15, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–32983 Filed 12–20–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–30–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200, –300, and –400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747–200, –300, –400 series airplanes, that currently requires repetitive high frequency eddy current (HFEC) inspections to detect cracking of

the front spar web of the center section of the wing, and repair, if necessary. This action would require that the existing inspection be accomplished at a reduced threshold. This action also would add a requirement that the existing HFEC inspection be accomplished on repaired areas. This proposal is prompted by reports of cracking in repaired areas of the front spar web and cracking of the front spar web on an airplane that had accumulated fewer flight cycles than the inspection threshold of the existing AD. The actions specified by the proposed AD are intended to prevent the leakage of fuel into the forward cargo bay, as a result of fatigue cracking in the front spar web, which could result in a potential fire hazard.

DATES: Comments must be received by February 4, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–30–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this 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–30–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–30–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On February 19, 1997, the FAA issued AD 97–05–01, amendment 39–9945 (62 FR 8613, February 26, 1997), applicable to certain Boeing Model 747–200, –300, and –400 series airplanes, to require repetitive high frequency eddy current (HFEC) inspections to detect cracking of the front spar web of the center section of the wing, and repair, if necessary. That action was prompted by reports of fatigue cracking found in the front spar web. The requirements of that AD are intended to prevent the leakage of fuel into the forward cargo bay, as a result of fatigue cracking in the front spar web, which could result in a potential fire hazard.

Actions Since Issuance of Previous Rule

Since the issuance of AD 97–05–01, the FAA has received reports of cracking in repaired areas of the front spar web on Model 747SR series airplanes. Also, the FAA has received a report for the first time of cracking in the front spar web on a Model 747–200 series airplane. The Model 747–200 series airplane had accumulated 13,309 total flight cycles, which is less than the 18,000 total landing compliance time specified in AD 97–05–01 for certain airplanes.

The front spar web on Model 747SR series airplanes is identical to that on the affected Model 747–200 series airplanes, except there is no fuel located behind the front spar web on Model 747SR series airplanes. In addition, if the subject fatigue cracking were to occur on these airplanes, the cabin pressure would vent through the front spar web and then the limiting access holes of the front spar; this would result in a loss of pressurization, but not sudden decompression. This would also not result in damage to unpressurized areas. Therefore, no unsafe condition exists on Model 747SR series airplanes.

Explanation of Relevant Service Information

Subsequent to the finding of this new cracking, the manufacturer issued and the FAA reviewed and approved Boeing Service Bulletin 747–57A2298, Revision 2, dated October 2, 1997, and Boeing Alert Service Bulletin 747–57A2298, Revision 3, dated January 7, 1999.

The method of inspection in Revision 2 of the service bulletin is identical to that described in Revision 1 of the service bulletin (which was referenced in AD 97–05–01 as the appropriate source of service information). However, Revision 2 revises the inspection procedures to include instructions for repetitive HFEC inspections of the aft side of the front spar web to detect cracking. These instructions were added to allow inspection when a prior repair precludes access to the forward side of the front spar web.

The inspection procedures in Revision 3 of the service bulletin are identical to those described in Revision 2 of the service bulletin. Revision 3 reduces the inspection threshold and revises the listing of current operators of affected airplanes.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 97–05–01 to continue to require accomplishment of the requirements of the existing AD and to require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and the Service Bulletins

Operators should note that, although the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposed AD would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane

approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Cost Impact

There are approximately 485 airplanes of the affected design in the worldwide fleet. The FAA estimates that 105 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that are currently required by AD 97–05–01 and retained in this AD, take approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $50,400, or $480 per airplane, per inspection cycle.

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 39–9945 (62 FR 8613, February 26, 1997), and by adding a new airworthiness directive (AD), to read as follows:

BOEING: Docket 99–NM–30–AD. Supersedes AD 97–05–01, amendment 39–9945.

Applicability: Model 747–200, –300, –400 series airplanes, up to and including line number 744, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the leakage of fuel into the forward cargo bay, as a result of fatigue cracking in the front spar web, which could result in a potential fire hazard, accomplish the following:

Restatement of Requirement of AD 97–05–01, Amendment 39–9945

Repetitive Inspections

(a) Perform a high frequency eddy current (HFEC) inspection to detect cracking of the front spar web of the center section of the wing, in accordance with Boeing Alert Service Bulletin 747–57A2298, Revision 1, dated September 12, 1996; Boeing Service Bulletin 747–57A2298, Revision 2, dated October 2, 1997; or Boeing Alert Service Bulletin 747–57A2298, Revision 3, dated January 7, 1999; at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, until accomplishment of the requirements of paragraph (b) of this AD.

(1) For airplanes that have accumulated 12,000 to 17,999 total landings as of April 2, 1997 (the effective date of AD 97–05–01, amendment 39–9945): Perform the initial inspection within 12 months after April 2, 1997, unless previously accomplished within the last 12 months prior to April 2, 1997. Perform this inspection again prior to the accumulation of 18,000 total landings or within 1,400 landings, whichever occurs later; after accomplishing the initial inspection, and thereafter at intervals not to exceed 1,400 landings.

(2) For all other airplanes: Perform the initial inspection prior to the accumulation of 18,000 total landings or within 12 months after April 2, 1997, whichever occurs later. Repeat this inspection thereafter at intervals not to exceed 1,400 landings.

New Requirements of This AD

Repetitive Inspections

(b) Prior to accumulation of 12,000 total landings, or within 12 months after the effective date of this AD, whichever occurs later, perform an HFEC inspection to detect cracking of the front spar web of the center section of the wing, in accordance with Boeing Service Bulletin 747–57A2298, Revision 2, dated October 2, 1997; or Boeing Alert Service Bulletin 747–57A2298, Revision 3, dated January 7, 1999. Repeat the HFEC inspection thereafter at intervals not to exceed 1,400 landings. Accomplishment of the HFEC inspection constitutes terminating action for the repetitive inspection requirements of paragraph (a) of this AD.

Repair

(c) If any cracking is detected during any inspection required by paragraph (a) or (b) of this AD, prior to further flight, confirm the cracking with secondary procedures in accordance with Boeing Service Bulletin 747–57A2298, Revision 2, dated October 2, 1997, or Boeing Alert Service Bulletin 747–57A2298, Revision 3, dated January 7, 1999. Thereafter repeat the HFEC inspection required by paragraph (a) or (b) of this AD at intervals not to exceed 1,400 landings.

(1) If any vertical crack is found that is less than 10 inches in length and has not extended in a diagonal direction, prior to further flight, repair in accordance with the service bulletin.

(2) If any vertical crack is found that is 10 inches or greater in length; or if any crack is found that has extended in a diagonal direction (regardless of the length); or if any crack is found that would affect an existing repair, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Designated Engineering Representative who has been authorized by the FAA to make such findings. For a repair method to be approved by the Manager, Seattle ACO, or a Boeing DER, as required by this paragraph, the approval letter must specifically reference this AD.

Alternative Methods of Compliance

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

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

(e) 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 15, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–32982 Filed 12–20–99; 8:45 am]

BILLING CODE 4910–13–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE (99–159)]

14 CFR Parts 1261 and 1267

RIN 2700–AC35

Meritorious Claims Which Result From the Conduct of NASA Functions

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Aeronautics and Space Administration (NASA) proposes to amend its rules regarding the submission and processing of meritorious claims under section 203 of the National Aeronautics and Space Act of 1958, as amended. NASA regulations currently discuss the submission and processing of meritorious, as well as tort, claims by NASA. This proposal provides separate coverage for meritorious claims in a new part. The proposal reflects the statutes and requirements governing these two types of claims, differences in their processing and settlement by NASA, and differences in their payment.

DATES: Comments must be received on or before February 22, 2000.

ADDRESSES: Send comments to Associate General Counsel (Contracts), Code GK, National Aeronautics and Space Administration, 300 E Street, SW., Washington, DC 20546–0001. Submit electronic comments and other data to *broan@hq.nasa.gov.* NASA will consider late comments to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Bernard J. Roan, (202) 358–2072 (voice), (202) 358–4355 (fax), and *broan@hq.nasa.gov* (e-mail).

SUPPLEMENTARY INFORMATION: 42 U.S.C. 2473(c)(13) governs meritorious claims against NASA for bodily injury, death, or damage to or loss of real or personal property resulting from the conduct of NASA's functions. Meritorious claims are those claims that NASA decides, as a matter of equity or fairness, to pay, but for which the United States could not be held legally liable to the claimant. 42 U.S.C. 2473(c)(13) authorizes NASA to consider and pay such meritorious claims in amounts of $25,000 or less and to consider for payment such meritorious claims exceeding $25,000. In turn, 31 U.S.C. 3104 requires the Secretary of the Treasury to certify payment of any claim exceeding $25,000 which NASA considers meritorious.

NASA regulations at 14 CFR subpart 1261.3 presently govern the processing of meritorious claims. Subpart 1261.3 discusses tort and meritorious claims without drawing any significant distinctions between the two types of claims. Moreover, subpart 1261.3 does not discuss the relationship between NASA and the Secretary of the Treasury in processing meritorious claims settled by NASA. Addressing meritorious claims separately from tort claims helps to clarify the bases NASA deems acceptable for considering meritorious claims.

The proposed rule creates a new part 1267 of 14 CFR governing NASA's processing of meritorious claims. The new part 1267 establishes specific procedures for considering meritorious claims arising from NASA space launch activities.

The proposed rule applies only to meritorious claims brought by third parties. The proposed rule does not apply to claims arising from NASA space launches for which the United States provides its space launch contractor indemnification against third party claims under other statutory authority. Moreover, the proposed rule, read in conjunction with proposed implementing coverage in the NASA supplement to the Federal Acquisition Regulation, addresses certain insurance requirements levied on space launch contractors for the payment of third party claims which might otherwise be filed as meritorious claims. Finally, the new part 1267 discusses administrative matters, such as filing and documenting meritorious claims, time limitations, processing by NASA officials, and final approval by the NASA General Counsel.

As required by the Regulatory Flexibility Act, NASA certifies that this proposed rule will not have a significant economic impact on small business entities.

These regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

As required by the Unfunded Mandates Reform Act, NASA certifies that this regulation will not compel the expenditure in any 1 year of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector. Therefore, the detailed statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

List of Subjects

14 CFR Part 1261

Accidents, Administrative practice and procedure, Claims, Tort claims.

14 CFR Part 1267

Accidents, Administrative practice and procedure, Claims, Federal Acquisition Regulations, Government contracts, Government procurement, Space transportation and exploration, Tort claims.

For the reasons set forth in the preamble, NASA proposes to amend 14 CFR parts 1261 and 1267 as follows:

PART 1261—PROCESSING OF MONETARY CLAIMS (GENERAL)

Subpart 1261.3—Claims Against NASA or Its Employees for Damage to or Loss of Property or Personal Injury or Death—Accruing on or After January 18, 1967

1. The authority citation for subpart 1261.3 is revised to read as follows:

Authority: 28 U.S.C. 2671–2680; and 28 CFR part 14.

2. Remove § 1261.301 paragraphs (b) and (c) and redesignate paragraph (d) as (b).

3. Remove § 1261.307 paragraph (b) and redesignate paragraph (c) as (b).

4. Amend § 1261.308 by:

A. Amending paragraph (c) by removing the phrase ''pursuant either to the Federal Tort Claims Act, or 42 U.S.C. 2473(c)(13)''; and

B. Removing paragraph (d).

5. Amend § 1261.312 paragraph (a) by removing the phrase ''a Voucher for Payment of Tort Claims (NASA Form 616) if the claim has been acted upon pursuant to 42 U.S.C. 2473(c)(13), or''.

6. Add part 1267 to read as follows:

PART 1267—MERITORIOUS CLAIMS WHICH RESULT FROM THE CONDUCT OF NASA FUNCTIONS

Sec.
1267.100 Scope of the part.
1267.101 Authorities.
1267.102 Applicability.
1267.103 Definitions.
1267.104 Claims.
1267.105 Presentation of claims.

1267.106 Filing and processing third party claims involving launch service contractors.
1267.107 Evidence and information required from third party claimants.
1267.108 Time limitations for third party claims.
1267.109 NASA action on a launch service claim.
1267.110 Confidentiality.

Authority: 42 U.S.C. 2473(c)(13); 31 U.S.C. 1304.

§ 1267.100 Scope of the part.

This part sets forth the procedures for submitting and processing claims against the United States for bodily injury, death, or damage to or loss of real or personal property resulting from the conduct of certain space launch functions by NASA through launch service contractors. This part further designates the NASA officials authorized to act upon these claims.

§ 1267.101 Authorities.

42 U.S.C. 2473(c)(13)(A), sec. 203(c)(13)(A) of the National Aeronautics and Space Act of 1958, as amended, authorizes NASA to consider, ascertain, adjust, determine, settle, and pay, on behalf of the United States, any claim made against the United States for $25,000 or less for bodily injury, death, or damage to or loss of real or personal property resulting from the conduct of NASA's functions as specified in 42 U.S.C. 2473(a). NASA may settle and pay a claim under this authority even though the United States could not be held legally liable to the claimant.

(a) 42 U.S.C. 2473(c)(13)(B) authorizes NASA to consider a claim in excess of $25,000 which, but for the dollar amount, would otherwise be covered by 42 U.S.C. 2473(c)(13)(A).

(b) 31 U.S.C. 1304, as amended by Public Law 104–316, appropriates amounts to pay settlements of meritorious claims, when certified by the Secretary of the Treasury and in excess of the amount payable from Agency appropriations under 42 U.S.C. 2473.

§ 1267.102 Applicability.

(a) One of NASA's primary functions is launching Government and Government-sponsored payloads into space. In recognition of this fact, NASA has determined that launches conducted by NASA through launch service contractors constitute, for purposes of considering claims under 42 U.S.C. 2473(c)(13), the conduct of a NASA function. Accordingly, NASA will include in its contracts for launch services a clause designating the launch as being the conduct of a NASA function and agreeing to consider claims resulting from the launch under the authority of 42 U.S.C. 2473(c)(13) and the procedures prescribed in this part.

(b) This part does not apply to launches for which the NASA Administrator has provided indemnification pursuant to Public Law 85–804, or to launches for which the Department of Transportation has issued or transferred a license under the Commercial Space Launch Act, 49 U.S.C., Chapter 701.

§ 1267.103 Definitions.

(a) *Meritorious claims* are those claims that NASA decides to pay as a matter of equity or fairness, but for which the United States could not be held legally liable to the claimant.

(b) *Third party claimant* means any person or entity, other than NASA, the launch service contractor, or the launch service contractor's subcontractors, at any tier, involved in the performance of launch services pursuant to a contract with NASA. For purposes of this part, employees of the Government, employees of the launch service contractor, and employees of the launch service contractor's subcontractors come within the definition of third party claimant.

§ 1267.104 Claims.

(a) For purposes of this part, a meritorious claim arises as a demand by a third party claimant against a NASA launch service contractor for money damages, in a sum certain, for bodily injury, death, or damage to or loss of real or personal property resulting from a launch conducted by NASA through that launch service contractor.

(b) NASA will consider a third party claim, originally made against a launch service contractor, as a claim against the United States for purposes of 42 U.S.C. 2473(c)(13) if the launch services were provided pursuant to a contract containing the clause at NASA Federal Acquisition Regulation Supplement (NFS) 1852.228–XX. Once received and evaluated, NASA will consider a third party claim that is reasonable in amount to be meritorious, unless the gross negligence or willful misconduct of the third party claimant, or any launch service contractor or subcontractor, caused or was an intervening cause in the bodily injury, death, or damage to or loss of real or personal property for which damages are sought.

(c) NASA will forward any meritorious claim that is reasonable in amount and arose out of the conduct of NASA's space launch function to the Secretary of the Treasury for certification for payment from the permanent Judgment Fund pursuant to 31 U.S.C. 1304 and implementing regulations; provided, the claim exceeds $25,000 and the launch service contractor has exhausted any insurance coverage required by the contract.

§ 1267.105 Presentation of claims.

(a) For damage to or loss of real or personal property, the owner of the property or his or her duly authorized agent or legal representative may present a claim.

(b) For bodily injury, the injured person or his or her duly authorized agent or legal representative may present a claim.

(c) For wrongful death, the executor or administrator of the decedent's estate or any other person legally entitled to assert such a claim in accordance with applicable state law may present a claim.

(d) For any loss wholly compensated by insurance, an insurer with the rights of a subrogee may present a claim. For any loss partially compensated by insurance, multiple parties with the rights of subrogees may present claims individually as their respective interests appear, or jointly. An insurer that provides insurance required by the NASA launch service contract may not present a subrogation claim based on that insurance.

(e) If an agent or legal representative presents a claim, it must be presented in the name of the claimant. The agent or legal representative must sign the claim, showing the title or legal capacity of the person signing, accompanied by evidence of the legal authority of the agent or representative to present a claim on behalf of the claimant.

§ 1267.106 Filing and processing third party claims involving launch service contractors.

(a) To come under this part, a third party claim arising out of a launch conducted by NASA through a launch service contractor must first be filed with the contractor providing the launch service. If the identity of the cognizant launch service contractor is not apparent, a claimant should contact the nearest NASA Center for information.

(b) The cognizant launch service contractor must promptly process any third party claim received in accordance with the terms of the contract and this part. As an initial matter, the launch service contractor must verify that any third party claim for bodily injury, death, or damage to or loss of real or personal property resulted from a launch conducted by NASA through the launch service contractor. If the claim resulted from a launch by NASA

conducted through the launch service contractor, then the contractor must settle the matter in a reasonable amount, applying any available insurance coverage required by the contract.

(c) If the cognizant launch service contractor finds that the insurance coverage required by the contract has been exhausted, the claim must be given to the NASA contracting officer. The contracting officer must consider any remaining liability as a claim against the United States in accordance with this subpart, the terms of the launch service contract, the Federal Acquisition Regulation (FAR), and the NASA FAR Supplement (NFS). As such, the contracting officer must examine the remaining liability to determine whether the amount claimed is reasonable. For amounts determined to be unreasonable, the contracting officer must refer the claim back to the launch service contractor to conduct further discussions. Ultimately, the contract's disputes clause prescribes procedures for resolving disagreements, if necessary. For amounts determined to be reasonable, the contracting officer must process the claim in accordance with § 1267.109.

§ 1267.107 Evidence and information required from third party claimants.

(a) A third party claimant should, insofar as possible, provide competent evidence to the launch service contractor to substantiate the circumstances alleged to have given rise to the claim and the amount claimed. A third party claimant should obtain supporting statements, repair bills, one or more estimates for repair, and other data, if possible. Documentation from disinterested parties should be obtained whenever possible.

(b) With regard to the amount claimed, a third party claimant must notify the launch service contractor of, and provide information concerning, any money or other property received as damages or compensation, or which the third party claimant may be entitled to receive from other sources by reason of the claimed bodily injury, death, or damage to or loss of real or personal property. These other sources of money, damages, or compensation include, but are not limited to, other launch service contractors, insurers, employers, and persons whose conduct may have caused or contributed to the accident or incident.

(c) A third party claimant must provide an English translation of any supporting document written in a foreign language.

§ 1267.108 Time limitations for third party claims.

(a) Consistent with the time limitation stipulated in 42 U.S.C. 2473(c)(13)(A), to receive consideration in accordance with this part, a third party claimant must file its claim with the launch service contractor within 2 years after the occurrence of the accident or incident out of which the claim arose. If the launch service contractor receives a third party claim within this time period, but after the launch service contract has expired, or if the claim is still pending when the contract expires, the contracting officer will reserve the matter for resolution during final contract closeout.

(b) A third party claimant has properly filed a claim for purposes of paragraph (a) of this section, when the cognizant launch service contractor receives from the claimant, or the claimant's duly authorized agent or legal representative, a written notification and description of the incident or accident giving rise to the claim, accompanied by substantiation of the amount claimed.

§ 1267.109 NASA action on a launch service claim.

(a) The contracting officer must investigate any launch service claim submitted by the launch service contractor. As necessary, the contracting officer may request any NASA office or other Federal agency to assist in the investigation.

(b) The contracting officer must evaluate any launch service claim submitted by a launch service contractor to determine that it is meritorious and reasonable in amount. As part of this evaluation, the contracting officer must verify that the amount requested is over and above any insurance required by the contract and that the launch service contractor or its insurer has, in fact, paid out an amount to the third party claimant equal to the amount of any required insurance coverage.

(c) The NASA General Counsel is NASA's final approving official for claims arising under 42 U.S.C. 2473, in an amount exceeding $25,000. To pay this type of claim from the permanent indefinite judgment fund, however, 31 U.S.C. 1304 requires certification by the Secretary of the Treasury. Accordingly, to facilitate the processing of claims under this part, the contracting officer must forward to the NASA General Counsel the following documentation:

(1) A short and concise statement of the general facts surrounding the launch service claim as a whole;

(2) Copies of all relevant portions of the launch service contract file and the claim file; and

(3) The contracting officer's analysis of the launch service claim and recommendations regarding payment from the permanent indefinite judgment fund.

(d) The NASA General Counsel must fully evaluate and consider any launch service claim forwarded in accordance with paragraph (c) of this section. If the General Counsel deems the claim to be reasonable, the General Counsel will refer the launch service claim to the Secretary of the Treasury for certification and payment from the permanent indefinite judgment fund pursuant to 31 U.S.C. 1304.

§ 1267.110 Confidentiality.

Under the process prescribed in this subpart, NASA officials may gain access to contractor documents and other materials that are privileged, business sensitive, or confidential. In accordance with 18 U.S.C. 1905, NASA officials may not disclose these materials in any manner or to any extent not authorized by law and must take appropriate steps to prevent unauthorized disclosures.

Daniel S. Goldin,

Administrator.

[FR Doc. 99–32591 Filed 12–20–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 250

[Release No. 35–27110; International Series Release No. 1210; File No. S7–30–99]

Registered Public-Utility Holding Companies and Internationalization

AGENCY: Securities and Exchange Commission.

ACTION: Concept release; request for comments.

SUMMARY: We are seeking comment on various issues surrounding the acquisition of United States utilities by foreign companies that will register as holding companies following the transaction.

DATES: Comments must be submitted on or before February 4, 2000.

ADDRESSES: Please send three copies of the comment letter to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 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. S7–30–99; include this file number on the subject line if E-mail is used. Anyone can read and copy the comment letters at our Public Reference Room, 450 Fifth Street, NW Washington, DC 20549. Electronically submitted comment letters also will be posted on our Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Catherine A. Fisher, Assistant Director, or Mark F. Vilardo, Senior Counsel, both at 202/942–0545.

SUPPLEMENTARY INFORMATION: Today we are requesting comment on issues arising under the Act with respect to foreign acquisitions of U.S. utilities.

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I. Executive Summary and Introduction

In 1992, Congress adopted the Energy Policy Act of 1992 [Pub. L. 102–486, 106 Stat. 2776 (1992)] (''Energy Policy Act''). The legislation amended the Public Utility Holding Company Act of 1935 [15 U.S.C. 79(a) *et seq.*] (''Holding Company Act'' or ''Act'') to create two new types of exempt entities, exempt wholesale generators (''EWGs'') and foreign utility companies (''FUCOs''). The legislation was intended to facilitate investments in foreign utilities by U.S. companies.

Just as registered holding companies have pursued investment opportunities abroad, foreign companies are increasingly seeking to enter the utility business in the United States.[1] Recently, two British companies engaged in the utility or energy business, Scottish Power plc (''ScottishPower'') and The National Grid Group plc (''National Grid''), have announced (and, in the case of ScottishPower, completed) plans to acquire U.S. utilities or public-utility holding companies.[2] ScottishPower has registered under the Act and National Grid has announced its intention to do so. The acquisition of a U.S. utility or holding company by a foreign company and the acquiror's subsequent registration raise a number of interpretative and policy issues under the Act. We will need to address these issues when such transactions are presented to us for any necessary approvals or when the foreign companies register under the Act. We are, therefore, seeking comment from the public relating to these issues.

II. Background

Congress amended the Holding Company Act in 1992 in response to changes in the United States utility industry. As discussed in greater detail below, the Energy Policy Act created new categories of exempt entities and thereby provided greater flexibility for U.S. and foreign companies to acquire EWGs and for U.S. utilities to acquire both EWGs and FUCOs.[3]

The utility business is rapidly evolving into a global industry, with participants seeking multinational investment opportunities. Sweeping political and economic changes worldwide have created a large demand for American utility expertise and significant investment opportunities for United States companies. Registered public utility holding companies have taken advantage of these opportunities. As of December 31, 1998, registered holding companies had invested $8.2 billion in FUCOs and $892 million in domestic and foreign EWGs. Based on publicly reported information, we believe that investments made by exempt holding companies and public utilities not part of a registered or exempt holding company system, are significantly higher.[4] At the same time, foreign energy companies have made significant investments in the United States, primarily through acquisition of electric wholesale generation units which, by virtue of the Energy Policy Act, are exempt from the Act.[5] In this Release, we are requesting comment on issues relating to the acquisition of U.S. utility companies by foreign holding companies.

III. Acquisition of U.S. Utilities by Foreign Companies

In 1994, in recognition of the increasingly international nature of the energy business, we requested public comment on the concept of foreign ownership of U.S. utilities.[6] We asked,

[1] *See infra* note 5.

[2] On December 7, 1998, ScottishPower, an electric, gas and water utility based in the United Kingdom, announced its proposed acquisition of PacifiCorp, a electric utility operating in the western United States, in a share exchange valued at $12.8 billion, including assumed debt. *See ScottishPower Offers $7.8 Billion for PacifiCorp*, Megawatt Daily, Dec. 8, 1998, at 1. On December 14, 1998, National Grid, an electric transmission utility, also based in the U.K., announced its proposed acquisition of New England Electric System (''NEES''), an electric utility operating in the northeast United States, for $3.2 billion in cash. *See* Laura Johannes, *Electric Utility Set to Be Acquired by National Grid*, Wall St. J., Dec. 14, 1998, at A2. In June 1999, the Federal Energy Regulatory Commission (''FERC'') approved each of these transactions. *See* Howard Buskirk, *FERC Approves Foreign Buys of U.S. Utilities*, The Energy Daily, Jun. 17, 1999, at 3. On November 30, 1999, ScottishPower announced that it had completed its acquisition of PacifiCorp. On December 1, 1999, ScottishPower filed with this Commission its Form U5A, notification of registration as a holding company under the Act. National Grid's application concerning its acquisition of NEES is pending at the Commission. *See* Holding Co. Act Release Nos. 27085 and 27086 (Oct. 8, 1999), 64 FR 56236 (Oct. 18, 1999) and 64 FR 56372 (Oct. 19, 1999) (notices of the applications relating to the proposed acquisition of NEES by National Grid and National Grid's financing authorizations). ScottishPower concluded that, under section 9(a) of the Act, it did not require our approval to acquire PacifiCorp. *See infra* note 29 for a discussion of the circumstances under which a utility acquisition requires our approval.

[3] The Energy Policy Act amended the Holding Company Act by, among other things, adding section 33, which addresses acquisition and ownership of FUCOs. In section 33(c)(1), Congress directed the Commission to adopt rules concerning FUCO acquisitions by registered holding companies. *See* 15 U.S.C. 79z–5b(c)(1). Under this directive, the Commission proposed rules 55 and 56 in 1993, but deferred action on those rules in order to consider the comments received on the rules. *See* Holding Company Act Release No. 25757 (Mar. 8, 1993), 58 FR 13719 (Mar. 15, 1993) (proposing release); Holding Company Act Release No. 25886 (Sept. 23, 1993), 58 FR 51488 (Oct. 1, 1993) (adopting certain rules, deferring action on rules 55 and 56). The Commission will consider reproposing rules 55 and 56 in the near future.

[4] As of December 31, 1998, holding companies exempt under rule 2 of the Act had invested $12.3 billion in FUCOs and domestic and foreign EWGs. In addition, domestic energy companies that are not part of either a registered or exempt holding company system have made major investments in FUCOs and EWGs in recent years. For example, in 1995 and 1996, PacifiCorp, a public utility company operating in the western United States, acquired an Australian electric distribution company and an interest in an Australian power plant and mine for a total of $1.7 billion. According to a U.S. Department of Energy report, U.S. energy companies have played ''a major role * * * as investors in the reformed and privatized electricity sectors'' in the United Kingdom, Australia and Argentina. *See* Electricity Reform Abroad and U.S. Investment, Energy Information Administration, September 1997, at v.

[5] In 1998, foreign utilities invested $31.3 billion in the United States. *See Power Legislation; Foreign Companies Acquiring U.S. Utility Systems: Overcoming PUHCA*, Power Economics, March 31, 1999, at p. 23. For example, National Power plc, the U.K.'s largest power generator, has invested over $1.0 billion in U.S. generating facilities and had announced plans to spend an additional $1.6 billion on U.S. generation projects and acquisitions. *See Overseas Investments; National Power Steps Over the Pond*, Power Economics, Nov. 30, 1998, at 5. In addition, British Energy Inc., a British utility, in partnership with PECO Energy Co., an inactive registered holding company, have agreed to buy three of four U.S. nuclear plants that have been put up for sale in the past year. *See* Christopher Palmieri and John Gorham, *Give Me Your Nukes*, Forbes, Sept. 6, 1999, at 124–25. *See also infra* note 37.

[6] *See* Request for Comments on Modernization of the Regulation of Public-Utility Holding

among other things, whether the Holding Company Act permits foreign ownership; what conditions should be placed on foreign ownership; whether there was a national security interest in restricting foreign ownership of U.S. utilities; whether there are difficulties in obtaining information from foreign companies that would support limitations on foreign ownership; and what types of safeguards or limitations on ownership might prevent or minimize such risks.

Most commenters appeared to agree that the Holding Company Act did not, or should not, prohibit foreign ownership of U.S. utilities.[7] Commenters suggested that foreign ownership could bring some advantages to domestic utilities—increased sources of capital (which could reduce the cost of capital) and management experienced in dealing with competitive markets.[8] Commenters agreed that foreign holding companies would and should be subject to the same regulatory requirements as U.S. companies.[9] Local regulators were divided on whether foreign ownership would impede their ability to obtain information relevant to ratemaking.[10]

Since our initial request for comment, there have been significant foreign investments in domestic power projects.[11] The prospect of foreign ownership of significant U.S. utilities is raised by ScottishPower's acquisition of PacifiCorp and National Grid's proposed acquisition of NEES.[12] ScottishPower has registered under the Act, and National Grid has announced its intention to do so. The acquisition of a U.S. utility or holding company by a foreign company and the acquiror's subsequent registration raise a number of interpretative and policy issues under the Act. We think it appropriate, therefore, to renew our request for comment on the issues related to foreign ownership of U.S. utilities.

A. The Legal Framework

Federal law imposes various restrictions on foreign ownership of some significant industries. Some laws specifically restrict foreign ownership.[13] Others provide for ownership subject to certain conditions. The Federal Aviation Act, for example, establishes percentage limitations on board membership and voting interests in determining whether an air carrier is considered a United States citizen.[14]

In contrast, the Holding Company Act is silent concerning foreign ownership of domestic utilities. Nowhere does the Act explicitly require that a holding company be organized under U.S. law.[15] Indeed, we have noted that the Holding Company Act ''contains no prohibition against foreign holding companies as such.'' [16] We have not had occasion, however, at least in recent times, to address the registration under the Act of a foreign holding company.

It appears that Congress, in 1935, did not intend or foresee ownership of a domestic utility by a holding company domiciled outside the United States. The Act places structural and geographic limitations upon public-utility holding company systems. Section 11 of the Act generally limits a registered holding company to ownership of a single ''integrated public-utility system,'' defined in terms of a group of naturally related operating properties. Under section 2(a)(29) of the Act, an integrated public-utility system is ''confined in its operations to a single area or region, in one or more States * * *.'' [17]

For many years, it was generally assumed that the integration provisions of the Act would generally preclude a U.S. registered holding company from owning both domestic and foreign utility properties, especially if the foreign utility operations were located in a country not contiguous to the United States.[18] For virtually identical reasons, the integration provisions were understood to bar a holding company with foreign utility operations from acquiring a U.S. utility.[19]

In 1992, we determined that a U.S. registered holding company could acquire foreign utility properties notwithstanding the integration

Companies, Holding Co. Act Rel. No. 26153 (Nov. 2, 1994), 59 FR 55573 (Nov. 8, 1994).

[7] Consolidated Natural Gas Company; NEES; Southern Company (''Southern''); Wisconsin Electric Power Company; City of New Orleans; American Gas Association (''AGA''); National Power PLC/American National Power, Inc.; New York State Bar; Yorkshire Electricity Group/National Grid Company (''Yorkshire''). Only two commenters, the staff of the Michigan Public Service Commission (''MPSC'') and Allegheny Power System (''APS''), suggested that foreign ownership should be prohibited. Comments we received in response to our initial request for comments may be found in File No. S7–32–94.

[8] City of New Orleans; Southern; Yorkshire.

[9] *See, e.g.*, AGA; City of New Orleans.

[10] The MPSC expressed concern that absentee owners may not place sufficient emphasis on service and the public interest, and that access to books and records may be compromised. On the other hand, City of New Orleans stated that foreign ownership would not impair access to relevant books and records.

[11] *See supra* notes 4 and 5.

[12] *See supra* note 2.

[13] *See, e.g.*, 16 U.S.C. 797 (power production on land and water controlled by the U.S. government); 42 U.S.C. 2131–2134 (prohibition of foreign ownership or control of facilities that produce or use nuclear materials); 42 U.S.C. 6508 and 43 U.S.C. 1701 *et seq.* (oil and gas leases within the National Petroleum Reserve).

[14] *See* 49 U.S.C. 1301(16) (air carrier considered U.S.citizen if president and two-thirds of board of directors and other managing officers are U.S. citizens and at least 75% of voting interest is owned or controlled by U.S. citizens).

[15] The key definitions in the Holding Company Act (*e.g.*, ''electric utility company,'' ''gas utility company,'' ''public-utility holding company,'' ''holding company,'' ''holding-company system'') make no reference to a company's domicile. *See, e.g.*, sections 2(a)(3) [15 U.S.C. 79b(a)(3)], 2(a)(4) [15 U.S.C. 79b(a)(4)], 2(a)(5) [15 U.S.C. 79b(a)(5)], 2(a)(7) [15 U.S.C. 79b(a)(7)] and 2(a)(9) [15 U.S.C. 79b(a)(9)] of the Act. Section 5 [15 U.S.C. 79e] of the Act, which sets forth certain procedural requirements for registration under the Act, does not refer to the domicile of the holding company.

Section 4(b) [15 U.S.C. 79d(b)] of the Act does make reference to holding companies' being organized under state law. This section generally requires that a holding company must register with the Commission if any of its securities that were publicly offered after January 1, 1925 are held ''by persons not resident in the State in which such holding company is organized.'' (Section 2(a)(24) of the Act defines the term ''State'' to mean ''any State of the United States or the District of Columbia.'') The legislative history suggests that section 4(b) was included to assure that the Act subjected to federal regulation those companies that might in some way affect interstate commerce, rather than to require that holding companies be organized under state law. *See* S. Rep. No. 621, 74th Cong., 1st Sess. 25:

[Section 4(b)] subjects to Federal jurisdiction those holding companies which, though they may not contemplate new acts in interstate commerce in the immediate future, are nevertheless affected with a national public interest by reason of the fact that they have in the past set in motion through the channels of interstate commerce forces which affect investors throughout the country, which forces are still in operation in more than one State and cannot be effectively dealt with by any State.

[16] Gaz Metropolitain, Inc., Holding Co. Act Rel. No. 26170 (Nov. 23, 1994) (''*Gaz Met*''). In *Gaz Met* we approved the acquisition of a Vermont gas utility by a Canadian gas holding company and granted the holding company an exemption from registration under section 3(a)(5) of the Act. Section 3(a)(5) makes an exemption available to a holding company that ''is not, and derives no material part of its income, directly or indirectly, from any one or more subsidiary companies which are, a company or companies the principal business of which within the United States is that of a public-utility company.''

[17] The provisions of section 11(b)(1)(A)–(C) create an exception to the requirement of a single integrated system. Clause B would permit a registered holding company to own, in addition to its primary U.S. integrated system, an additional system located in a contiguous foreign country.

[18] *See, e.g.*, Electric Bond and Share Co., 33 S.E.C. 21 (1952) (''the provisions of Section 11(b)(1) stand in almost every detail as an unyielding barrier'' to the simultaneous holding of large domestic utility operations and utility operations in Cuba, Mexico, Central and South America, China and India). *See also* Report Relating to Intercorporate Relations Between the General Public Utilities Corp. and the Manila Electric Company, S. Rep. 2787, 84th Cong., 2d Sess. (July 25, 1956) (report of Senator Magnuson from the Committee on Interstate and Foreign Commerce to accompany H.R. 10621, a bill to exempt General Public Utilities Corp., a registered holding company, from the provisions of section 11(b)(1) of the Act, under which we had ordered the holding company to divest its Philippine utility subsidiary).

[19] *See Gaz Met, supra* note 16. In *Gaz Met*, we determined that the integration provisions did not bar the Canadian gas holding company from owning a Vermont gas utility.

provision.[20] In that year also, as discussed previously, Congress amended the Holding Company Act to permit the ownership of EWGs and FUCOs—utility properties that would not, when combined with existing utility properties, constitute an integrated system.

Sections 32 and 33 provide that EWGs and FUCOs are not public-utility companies. Thus, the Act's statutory integration provisions, by their terms, are not applicable to these entities. To eliminate any doubt that ownership does not implicate the Act's integration requirements, section 33(c)(3) provides that ownership of a FUCO is considered to be ''consistent with the operation of a single integrated public utility system, within the meaning of section 11 * * *.''[21] Section 32(h)(1) contains a similar provision for EWGs.

Section 33 is neutral on its face with respect to the ownership of a FUCO by a foreign holding company.[22] It is thus possible to construe section 33(c)(1) to allow a foreign holding company to qualify its foreign utility operations as a FUCO, and the foreign holding company to acquire a U.S. utility without regard to the integration of the foreign and domestic operations. As explained above, the Act would otherwise generally raise significant barriers to an acquisition of U.S. utility properties by a foreign company with existing foreign utility properties.

In adopting the Energy Policy Act, Congress did not address this possibility and therefore may not have intended this interpretation of section 33(c)(1). The legislative history of the Energy Policy Act emphasizes that the legislation was designed to enable U.S. companies to respond to domestic and overseas investment opportunities. Nothing in the legislative history suggests that section 33 was intended to be a vehicle for foreign investment in the United States.

Moreover, although section 33(c)(1) does not expressly preclude foreign holding companies, we do not believe it should be interpreted to permit a foreign holding company to acquire a U.S. utility if doing so would undercut the fundamental purpose of the Act—to protect consumers and investors.[23] We recognize that foreign registered holding companies present novel and important issues. We therefore are soliciting comments generally on the registration and regulation of foreign holding companies. These comments will inform our consideration of rule 55, our consideration of applications and requests for interpretative guidance concerning foreign holding companies and our review, under section 11, of registration statements filed by foreign holding companies. The comments may also suggest an additional rulemaking to address these issues.

B. Areas for Comment

1. General Policies of the Act

The Holding Company Act was intended to address the practices by which small groups of investors, by means of the holding company structure, were able to exploit vast networks of utility companies, to the detriment of utility consumers and other security holders. The specific problems identified by Congress included inadequate disclosure, excessive leverage, abusive affiliate transactions, evasion of state regulation, and the growth and extension of holding companies without regard to the economy of management and operation of system utility companies.[24]

We request comment whether foreign registered holding companies, by virtue of being foreign, are inconsistent with the Holding Company Act's policies. In general, we request comment concerning:

- the effects of foreign ownership on effective Commission regulation;
- the effects of foreign ownership on effective state regulation;
- the effects of foreign ownership on investor protection; and
- the effects of foreign ownership on consumer protection.

In particular, a registered foreign holding company would likely own significant foreign utility operations. The magnitude of these foreign utility operations could be significantly greater than those currently owned by U.S. holding companies; they could be significantly larger than the holding company's U.S. utility system. Will this expose U.S. ratepayers to greater risks? Should newly registered, foreign holding companies' interests in FUCOs and EWGs be ''grandfathered,'' with only post-registration FUCO and EWG investments counted toward the aggregate investment test of rule 53(a)(1)?[25] U.S. holding companies, in seeking authorization to issue securities to finance the acquisition of FUCOs, have represented that they will not seek recovery in rates for any losses, or inadequate returns, on their investments in FUCOs and EWGs. Will foreign holding companies be in a position to make similar undertakings with respect to their FUCO operations?

We also request comments on whether structural safeguards can be developed to limit the risk that financial problems in the holding company's FUCOs will have an adverse effect on U.S. ratepayers and security holders of the holding company's U.S. subsidiaries. For example, would requiring the U.S. utility subsidiary stock to be owned by an intermediate holding company based in the U.S. and organized under state law provide any additional protection to U.S. interests? Would such intermediate holding companies be consistent with the Act's goal of simplifying the corporate structure of holding companies? We are particularly interested in the views of state regulators and consumers concerning the effects of foreign ownership on state regulation and consumer protection.

2. Section 11

Section 11 has been described by the Supreme Court as the ''very heart'' of the Act.[26] In addition to the general requirement that a registered holding company own a single integrated public-utility system, section 11 limits nonutility businesses to those that are

[20] *See* Southern Co., Holding Co. Act Release No. 25639 (Sept. 23, 1992) (authorizing registered holding company to acquire Australian utility operations). We relied upon the second clause of section 10(c)(2), which provides that section 10(c)(2), requiring us to find that an acquisition ''will serve the public interest by tending towards the economical and efficient development of an integrated public-utility system,'' does not apply to an acquisition of a public-utility company operating exclusively outside the United States. In 1992, also, we granted orders of exemption under section 3(b) from all provisions of the Act for two newly formed indirect Australia subsidiaries of SCEcorp, an exempt holding company. *See* SCEcorp., Holding Co. Act Release No. 25564 (June 29, 1992).

[21] Section 11 also provides that any nonutility business owned by a registered holding company be ''reasonably incidental, or economically necessary or appropriate, to the operations of such integrated public utility system * * *.'' Section 33(c)(3) provides that ownership of a FUCO satisfies this standard.

[22] Section 33(a)(1) provides an exemption for a FUCO ''notwithstanding that the [FUCO] may be a subsidiary * * * of a holding company or of a public utility company.'' The nationality of the holding company is not a component of the exemption. Similarly, section 32 allows ownership of a domestic EWG without regard to the owner's nationality.

[23] *See* Crandon v. United States, 494 U.S. 152, 158 (1990) (''In determining the meaning of [a federal] statute, [the court] look[s] not only to the particular statutory language, but to the design of the statute as a whole and to its object and policy.'') (citations omitted).

[24] Section 1(b) of the Holding Company Act [15 U.S.C. 79a(b)].

[25] Rule 53 provides a partial ''safe harbor'' for EWG financings by registered holding companies. Among other things, in order to qualify for the safe harbor the amount of a registered holding company's aggregate investments in EWGs and FUCOs cannot exceed 50% of the system's consolidated retained earnings. *See* rule 53(a)(1) [17 CFR 250.53(a)(1)].

[26] SEC v. New England Elec. System, 384 U.S. 176, 180 (1966), citing North American Co. v. SEC, 327 U.S. 686, 704 n.14 (1946).

''reasonably incidental, or economically necessary or appropriate'' to system utility operations, on our finding that the nonutility businesses are ''necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems.'' Section 11 further directs us to require the simplification of the corporate structure of registered systems and to ensure that voting power is fairly and equitably distributed among security holders.

The policies underlying section 11 must also enter into our consideration of the acquisition of a U.S. utility by a foreign company. Section 10(c)(1) provides that we cannot approve an acquisition if it would be detrimental to the carrying out of the provisions of section 11. Section 10(c)(2) provides that we must find that the acquisition will serve the public interest by tending towards the economical and efficient development of an integrated public-utility system.

Section 10(c)(2) ''make[s] clear that the Commission was not to approve acquisitions of utility securities merely because of the absence of indications of any positive detriment to the carrying out of Section 11.'' [27] What types of direct or indirect benefits should be considered under section 10(c)(2) when a foreign company seeks to acquire a domestic utility? For example, would a domestic public-utility system benefit from an affiliation with a financially stronger foreign holding company, or a foreign company that has experience in operating in competitive markets? Are these benefits a sufficient basis for making the findings required by section 10(c)(2)? Are there other economies and efficiencies that foreign ownership would confer upon a domestic system?

Commenters should specifically address the key goals of an integrated system as reflected in section 2(a)(29)—the ''advantages of localized management, efficient operation, and the effectiveness of regulation * * *.'' [28] Localized management is a particular issue in this context. The advantage of localized management is that policies affecting consumers and local regulators are handled by persons who are intimately familiar with local conditions and are sensitive and responsive to the interests of the community and of consumers. This does not necessarily mean that the directors and officers of the holding company must be permanent residents of the locality. For example, the advantages of localized management can be realized where the authority and responsibility for local policy-making are properly delegated throughout the service territory of the holding company. Would a foreign holding company be able to preserve the advantages of local management?

Section 11 not only addresses the integration of utility properties but also requires us to limit the nonutility businesses of a registered holding company to those that are ''reasonably incidental, or economically necessary or appropriate to the operations of'' the holding company system. We have interpreted this provision to reflect a Congressional policy against nonutility acquisitions that bear no functional relationship to the core utility business of the registered holding company. We request comments on how this provision should apply with respect to non-utility businesses of a FUCO.

3. Other Standards for Reviewing Acquisitions

Section 9 of the Act provides that, under certain circumstances, the acquisition of a public-utility company or public-utility holding company requires our prior approval.[29] The main purpose of section 9 is to prevent ''the growth and extension of holding companies [that bear] no relation to economy of management and operation or the integration and coordination of related operating properties'' (an abuse that led to enactment of the Holding Company Act).[30] Section 10 of the Act sets forth the standards for reviewing acquisitions. Section 10(b) provides that we shall approve an acquisition unless we affirmatively find that the acquisition will have certain adverse consequences.[31] Section 10(c)(2) provides that we shall not approve an acquisition unless we affirmatively find that the acquisition will ''[tend] towards the economical and the efficient development of an integrated public-utility system.'' Finally, section 10(f) requires us to be satisfied that there is compliance with state law.

We request comments concerning whether the foreign nature of an acquiror raises any particular issues concerning the application of section 10. In addition to the issues relating to section 10(c), we must consider the following issues:

Section 10(b)(1) Will the acquisition tend towards interlocking relations or the concentration of control of public-utility companies, of a kind or to an extent detrimental to the public interest or the interest of investors, or consumers?

Traditionally, our evaluation of this factor has been informed by federal antitrust policies.[32] Should we weigh concentration of control issues in view of the increasing internationalization of the energy business? Should we continue to rely, where appropriate, upon the findings and requirements of other agencies that address the potential anticompetitive effects of an acquisition?

Section 10(b)(3): Will the acquisition unduly complicate the capital structure of the holding-company system of the applicant or be detrimental to the public interest or the interest of investors or consumers or the proper functioning of such holding-company system?

We request comments concerning how foreign ownership could ''unduly complicate the capital structure of the holding company system * * *.'' We would, of course, have to consider whether the holding company has

[27] Electric Bond and Share Co., supra note 18, at 31.

[28] Section 2(a)(29) of the Act.

[29] Section 9(a)(1) of the Act requires our prior approval under section 10 of a direct or indirect acquisition by a registered holding company of any securities or utility assets.

Section 9(a)(2) of the Act bars any person who is an affiliate of a public-utility or holding company from becoming an affiliate of any other public-utility company or holding company without our prior approval. Section 2(a)(11)(A) defines an ''affiliate'' of a specified company as ''any person that directly or indirectly owns, controls, or holds with power to vote 5 per centum or more of the outstanding voting securities of such specified company.'' As noted above, a FUCO is not a public-utility company for purposes of the Act.

An entity that has no public utility affiliate may acquire the securities of a single utility without the need to seek or obtain our prior authorization. This acquisition, which is known as a ''first bite,'' would not be subject to section 9(a)(2). For example, ScottishPower concluded that its acquisition of PacifiCorp constituted its ''first bite'' for purposes of section 9(a). *See* PacifiCorp proxy statement, dated May 6, 1999, at 69.

An acquisition of a company having two or more utility subsidiaries, however, would simultaneously involve both a ''first bite'' and a ''second bite'' and so be subject to section 9(a)(2). *See* Coral Petroleum, Inc., Holding Co. Act Release No. 21632 (June 19, 1980).

[30] *See* section 1(b)(4) of the Act.

[31] In addition to the findings discussed below, we must find that the consideration paid in connection with the acquisition is not reasonable or does not bear a fair relation to the sums invested in or the earning capacity of the utility assets to be acquired or the utility assets underlying the securities to be acquired.

[32] *See, e.g.,* Sempra Energy, Holding Co. Act Release No. 26890 (June 26, 1998) (relying upon findings and remedial measures of the Department of Justice, the FERC and the interested state commission to address potential anticompetitive effects of acquisition); Entergy Corp., Holding Co. Act Release No. 25952 (Dec. 17, 1993) (relying upon hearing records and orders of FERC and state commissions). *See also* Madison Gas and Electric Co. v. SEC, slip op., Dkt. No. 98–1216 (DC Cir. Mar. 16, 1999) (''We have previously observed that the SEC is entitled to 'watchfully' defer to the determinations of other regulatory bodies * * *.'') (citations omitted).

issued stock with special voting rights to any particular group or class.[33] In this regard, we understand that, in connection with certain foreign utility privatization transactions, foreign governments hold special or ''golden'' shares that give them veto rights with respect to certain corporate transactions. We recognize that these shares are intended to protect the foreign government's regulatory interests rather than to create the type of abusive capital structure that led to passage of the Act. Are these types of arrangements inconsistent with the Act?

We would also consider whether foreign law imposed any impediments on our ability to inspect the foreign holding company and its subsidiaries. Such impediments could be detrimental to the public interest, the interests of investors and consumers, and ''the proper functioning of [a] holding-company system.''

4. Substantive Regulation of Foreign Holding Companies

The Holding Company Act imposes a comprehensive federal framework of regulation on registered holding companies. A registered foreign holding company would be subject to this framework to the same degree as a registered domestic company. For example, we must approve:

- issuances and sales of securities;[34]
- certain acquisitions;[35] and
- sales of utility assets.

We also have jurisdiction over intrasystem transactions. For example, section 12 requires our prior approval for a registered holding company or its subsidiary ''to lend or in any manner extend its credit to or indemnify any company in the same holding-company system.'' Section 13 authorizes us to regulate service, sales and construction contracts between operating utilities within a registered system and other companies within the same system and require that such services be performed at cost. Finally, registered holding companies are subject to extensive reporting, recordkeeping and accounting requirements.

Despite our jurisdiction over registered holding companies, the EWGs and FUCOs owned by a foreign registered holding company, like those of a domestic registered holding company, would generally be exempt from the Act. Moreover, a FUCO may issue and acquire securities without our authorization. A registered holding company with large FUCO operations may be able to issue securities through a FUCO to finance other businesses. Does this raise significant policy issues under the Act, even if the holding company's U.S. utilities do not have any liability with respect to those financings?

5. Accounts and Records; Jurisdiction

The Holding Company Act contains a number of provisions designed to prevent companies in registered holding company systems from engaging in abusive affiliate transactions. In order for these provisions to be effective, we were given the authority to monitor intra-system transactions by requiring the making and keeping of holding company system records and mandating that we have access to those records.[36]

We anticipate that we would be able to exercise this authority with respect to foreign registered holding companies. We request any information concerning possible impediments to our exercise of our inspection authority and jurisdiction. Are there difficulties in obtaining information from foreign companies that are inconsistent with regulation under the Holding Company Act? What types of safeguards or limitations on ownership might prevent or minimize such risks?

6. Other Issues

Are there any other policy issues related to foreign acquisitions of U.S. utilities that we should consider? For example, do we need to consider national security interests that would be implicated by a foreign acquisition of a U.S. utility?[37] We note that the President may investigate the national security effects of ''foreign control of persons engaged in interstate commerce in the United States,'' and suspend or prohibit any acquisition, merger, or takeover of such persons in order to protect the national security.[38] United States companies have acquired significant interests in FUCOs over the past several years. Would restrictions on foreign ownership of U.S. utilities be likely to lead to restrictions on investment in FUCOs by U.S. investors?

Dated: December 14, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–32952 Filed 12–20–99; 8:45 am]

BILLING CODE 8010–01–P

[33] *See* section 11(b)(2).

[34] Sections 6 and 7 require our prior approval under specified qualitative standards for most types of securities issuances.

[35] Section 11(b)(1) confines the nonutility businesses of a registered holding company to those that have a functional relationship to its core utility business. Rule 58 under the Act permits a registered holding company to acquire certain types of non-utility businesses without our approval.

[36] *See* section 15 of the Act.

[37] In response to our prior request for comments, APS raised national security concerns. Most of the other commenters did not believe that there were any national security concerns or that any such concerns should be addressed by Congress. Some federal laws specifically restrict foreign ownership of certain regulated entities, while others provide for ownership subject to certain conditions. *See, e.g.*, 42 U.S.C. 2131–2134 (prohibition of foreign ownership or control of facilities that produce or use nuclear materials). The Nuclear Regulatory Commission (''NRC'') has developed a ''Standard Review Plan'' for use in reviewing nuclear power plant licenses involving foreign interests. *See* Final Standard Review Plan on Foreign Ownership, Control, or Domination, 64 FR 5355 (Sept. 28, 1999). The NRC has approved, with certain restrictions on foreign ownership and control, transfers of the operating license for three nuclear power plants. *See NRC Approves AmerGen's Takeover of Clinton Plant*, The Energy Daily, Nov. 30, 1999 (describing transfers of two operating licenses to AmerGen Energy Co., a company jointly owned by PECO Energy Co., an inactive registered holding company, and British Energy Inc., a British utility company), and PacifiCorp (Trojan Nuclear Plant), 64 FR 63060 (Nov. 18, 1999) (NRC order approving transfer of licenses to ScottishPower). *See also supra* note 5.

[38] 50 U.S.C. App. 2170. The President has established the Committee on Foreign Investment in the United States to administer this authority. *See* 31 CFR 800.101, *et seq.*

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 604

RIn 1205–AB21

Birth and Adoption Unemployment Compensation; Correction

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Proposed Rulemaking; Correction.

SUMMARY: This document corrects the preamble to a notice of proposed rulemaking published in the **Federal Register** of December 3, 1999 (64 FR 67971), concerning Birth and Adoption Unemployment Compensation. The preamble to the notice of proposed rulemaking provided only a mailing address to which written comments could be submitted. This correction provides an e-mail address to which comments may be submitted.

FOR FURTHER INFORMATION CONTACT: Gerard Hildebrand, Unemployment Insurance Service, ETA, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S–4231, Washington, DC 20210. Telephone: (202) 219–5200 ext. 391 (this is not a toll-free number); facsimile: (202) 219–8506.

Correction

In the notice of proposed rulemaking FR Doc. 99–30445, beginning on page 67971 in the issue of December 3, 1999, make the following correction in the Addresses section. On page 67972 in the first column, add at end of the first sentence (after the ZIP code) the following: ‘‘, or by e-mail to the following address: commentonbaauc@doleta.gov.’’

Dated: December 15, 1999.

Raymond L. Bramucci,

Assistant Secretary of Labor.

[FR Doc. 99–32987 Filed 12–20–99 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 807

[Docket No. 99N–4784]

Premarket Notification; Requirement for Redacted Version of Substantially-Equivalent Premarket Notification

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its premarket notification regulations to require applicants to submit a redacted version of each premarket notification submission for which FDA has issued an order declaring a device to be substantially equivalent to a legally marketed predicate device. The purpose of this requirement is to provide applicants improved opportunity to protect nonpublic information contained in their premarket notifications while facilitating the release of information to which the public is entitled under the Federal Food, Drug, and Cosmetic Act (the act); the Freedom of Information Act; and FDA's Public Information regulations. The proposed rule does not require submission of a redacted version of any premarket notification received by FDA prior to the effective date of the regulation.

DATES: Submit written comments by March 22, 2000. Submit written comments on the information collection requirements by January 20, 2000.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written comments on information collection requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Bldg., 725 17th St. NW., Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Regulations Staff (HFZ–215), Center for Devices and Radiological Health, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20857, 301–827–2974.

SUPPLEMENTARY INFORMATION:

I. Background

Under the act, 21 U.S.C. 301 *et seq.*, FDA clears medical devices for commercial distribution in the United States through three regulatory processes: Premarket approval (PMA), product development protocol (PDP), and premarket notification (a premarket notification is generally referred to as a ‘‘510(k)’’ after the section of the act where the requirement is found). In addition, a significant number of devices have been exempted, subject to the limitations on exemptions, from any requirement to obtain premarket notification clearance because FDA has determined that the remaining general controls and special controls are adequate to provide a reasonable assurance of the safety and effectiveness of those devices. A variety of general controls, such as good manufacturing practices (GMP's), establishment registration and device listing, and Medical Device Reporting (problem reporting), and special controls for class II devices, are applicable to devices exempted from premarket notification to control the risks presented by these devices. For additional information on exemption from premarket notification, see 21 CFR 807.85 and FDA's medical device classification regulations, 21 CFR parts 862 through 892.

A. Premarket Notification

Of the three regulatory processes used by FDA to clear medical devices for commercial distribution, the premarket notification or 510(k) process is the most commonly used. The following table 1 summarizes FDA's experience during fiscal year (FY) 1998:

TABLE 1.—PRODUCT APPLICATIONS PROCESSED DURING FY 1998

Responsible center	Premarket Notifications		Premarket Approval Applications		Product Development Protocols		
	Received	Clear	Received	Approved	Received	Approved[1]	Complete
CBER	33	44	2	0	0	0	0
CDRH	4,623	3,824	55	46	11	4	0
All FDA	4,656	3,868	57	46	11	4	0

[1] Approval of a PDP protocol does not constitute marketing approval. A Notice of Completion must be submitted and approved before a device may be marketed under a PDP.

The purpose of a premarket notification is to demonstrate that the new device is substantially equivalent to a legally-marketed predicate device. A predicate device can be any of the following: A device legally marketed prior to May 28, 1976 (the date the Medical Device Amendments of 1976 and its premarket notification requirement became law); a device which has been reclassified from class III into class I or class II (the act provides three classes of devices: Class I devices are regulated primarily through general controls, such as registration, listing, and GMP's; class II devices are subject to both general controls and special controls, such as performance standards; class III devices are subject to general and special controls and must also undergo premarket review and approval); or a device which has been found to be substantially equivalent through the 510(k) premarket notification process.

Under section 513(i) of the act (21 U.S.C. 360c), a device is substantially equivalent if it has the same intended use and technological characteristics as a predicate device, or has different characteristics but data demonstrate that the new device is as safe and effective as the predicate device and does not

raise different issues of safety or efficacy. A device that is not shown to be substantially equivalent to a predicate device can be marketed only after the sponsor submits, and obtains FDA approval of, a PMA or notice of completion of a PDP, unless the device is reclassified into class I or class II under section 513(e) or section 513(f) of the act.

B. Statutory and Regulatory Requirements Relating to Release of Information in a 510(k)

Certain information in a 510(k) that has been cleared by FDA (i.e., found to be substantially equivalent to a legally-marketed predicate device) is subject to public disclosure under section 513(i)(3) of the act. That section and FDA's implementing regulations require applicants to provide FDA with an adequate summary (510(k) summary) of any information in their submission regarding safety and effectiveness for disclosure by FDA upon request, or alternatively, to submit a statement (510(k) statement) to FDA promising that they themselves will make certain 510(k) information available to the public upon request.

A second Federal statute relevant to the release of 510(k) information is the Freedom of Information Act (FOIA), 5 U.S.C. 552. The FOIA generally makes available for public disclosure all records in an agency's files, whether created by or submitted to the agency, except to the extent those records are covered by one or more of the nine exemptions enumerated in the statute (5 U.S.C. 552(b)). In particular, exemption 4 of FOIA protects from mandatory disclosure trade secrets and confidential commercial information (5 U.S.C. 552(b)(4)). In addition, the act requires withholding of trade secret information from the public, 21 U.S.C. 331(j), and the Trade Secrets Act also prohibits disclosure of trade secrets and confidential commercial information unless specifically authorized by law, 18 U.S.C. 1905. Accordingly, when FDA receives FOIA requests for 510(k) records (other than 510(k) summaries, which are intended for public disclosure as submitted by the applicant) trade secret and confidential commercial information will ordinarily be redacted (i.e., deleted) before the materials are released to the public. Prior to making final decisions about redactions and releasing these records to the public, FDA currently solicits the 510(k) holders' views on what information in their 510(k) submissions may be released to the public and what information may properly be withheld as exempt under FOIA. This practice is consistent with Executive Order 12600, which required agencies to establish predisclosure notification procedures under FOIA to protect confidential commercial information in the agencies' files.

In addition to FOIA's exemption from disclosure for trade secrets and confidential commercial information, FOIA permits the Government to withhold information about individuals in personnel, medical, and similar files, when the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552(b)(6)). With regard to 510(k)s, the issue of personal privacy protection occasionally arises when medical records or other data with patient identifiers are included or summarized in a 510(k). FDA's regulations implementing FOIA request applicants to delete names or other information that could identify patients or research subjects prior to submitting records to FDA, and require FDA to delete such information from any records it discloses (21 CFR 20.63). Similarly, FDA's regulations relating to 510(k)s require those 510(k) holders who submitted a 510(k) statement to FDA to delete such information before releasing a 510(k) (§ 807.93(c) (21 CFR 807.93(c))). (Submission of a 510(k) statement obligates the firm to provide a copy of an appropriately-redacted 510(k) to any requestor.)

Except for information that is exempt from disclosure under FOIA, all information in a 510(k) submission is available for disclosure to the public once the 510(k) is cleared. This includes the original submission, correspondence with FDA, memoranda of telephone conversations, amendments, or other supplemental information submitted prior to clearance of the 510(k) by FDA.

C. Predisclosure Notification and Other Issues Relating to FOIA Requests for 510(k)s

When a request is received for a particular 510(k) that has not been previously released under FOIA, FDA provides the 510(k) holder with a ''predisclosure notification'' in accordance with Executive Order 12600. Subject to certain exceptions, Executive Order 12600 requires the Government to notify submitters of records containing confidential commercial information prior to disclosure of those records in response to a FOIA request. The submitter is then permitted an opportunity to object to the disclosure of any part of the records and to state the basis for each such objection. FDA's predisclosure notification procedures implementing Executive Order 12600 are set forth at § 20.61(d) through (f) (21 CFR 20.61(d) through (f)).

It has been FDA's experience that many 510(k) holders who are provided predisclosure notification by the agency fail to respond adequately; they may not provide an appropriately redacted 510(k), not offer reasons to support redactions, or not respond at all. One reason for this occurrence is that, given the tight statutory timeframes FDA faces for responding to FOIA requests, the 510(k) holder can only be given a very short time to respond to the predisclosure notification; § 20.61(e)(2) requires a response in 5 working days. A second reason is that by the time a FOIA request is filed and predisclosure notification is given, a significant period of time may have passed since the 510(k) was cleared by FDA. As a result, the team of experts at the submitter company that contributed to the development of the 510(k) submission may not be readily available to respond to the predisclosure notification and will, in any case, have to spend time reviewing the 510(k) to refresh recollections and identify trade secrets or confidential commercial information that may be protected from public disclosure.

In addition, because there is no requirement at present for a 510(k) holder to inform FDA when ownership of the 510(k) is transferred to a new party, FDA has, in many instances, been unable to locate and verify the current 510(k) holder for purposes of sending predisclosure notification. Many other 510(k) holders simply fail to respond at all to FDA's predisclosure notification. Consequently, FDA assumed the job of unilaterally redacting many 510(k)s when responding to FOIA requests for those records. As FDA has invested more time and effort in redacting 510(k)s, the resources devoted to responding to 510(k) FOIA requests has inevitably increased. At times, this has resulted in significant backlogs that have delayed the release of information to the public and diverted limited agency resources from other responsibilities, including support for premarket review and postmarket surveillance.

II. Procedural Amendments

The proposed rule would amend § 807.87 (21 CFR 807.87) to require 510(k) applicants to include a statement that would commit the applicant to provide a redacted version of the 510(k) within 30 days of FDA's finding the device substantially equivalent. Proposed § 807.91 sets forth the statement that must be submitted. The statement is referred to as a

''commitment to submit a redacted 510(k).'' The redacted version is one that can be immediately released in response to a freedom of information request, published on the Internet, or otherwise made available to the public. The redacted version would include all sections of the 510(k) submission, including amendments, supplements, and all other documents included in the 510(k) submission, except to the extent that information may be appropriately redacted that is exempt from disclosure under FOIA, such as trade secrets, confidential commercial information, and personal privacy information.

The requirement to provide the redacted version within 30 days of FDA's decision is consistent with the statutory time set by section 513(i) of the act for submission of a 510(k) summary or statement. Although FOIA requires FDA to respond to FOIA requests within 20 days, FDA believes it is unlikely that there will be a real conflict between these two timeframes. This is because FDA publishes a list of 510(k) clearances about the same time each month, resulting in a lag time of at least 5 days, and up to 35 days, between the time of FDA's decision and the announcement of the decision. Although a 510(k) submitter may disclose the clearance of a 510(k) before FDA does, FDA believes it is extremely unlikely that the clearance would be made known and a FOIA request submitted so rapidly that the FDA response would be delayed due to the 30 days applicants would be permitted to provide a redacted version of the 510(k) to FDA.

Applicants would be permitted to use either of two techniques to redact information: (1) The entire 510(k) may be resubmitted with the information to be withheld from disclosure physically obscured to render it unintelligible (e.g., by covering the text or figure with black ink), or (2) the information to be withheld may be omitted from the redacted version, but the extent of each deletion must be described at the place in the document where the redaction was made (e.g., an indication that ''pages 12 through 15 have been redacted'' or ''paragraph concerning sources of raw materials has been deleted''). Simply providing FDA with written instructions such as, ''please do not release Section IV,'' and then expecting FDA to follow those instructions to locate and redact the information as specified by the applicant would be insufficient to comply with the requirement to submit a 510(k) already redacted of information that is exempt from disclosure to the public.

FDA encourages, but would not require, the redacted version to be submitted on disk, preferably as a portable document format file (.pdf file). Submission of .pdf files will facilitate FDA's release of information in electronic form, thereby assisting FDA in complying with its new obligations under the Electronic Freedom of Information Act Amendments of 1996 (EFOIAA) to make reasonable efforts to furnish records in an electronic format when requested to do so.

The proposed rule does not address the redaction of 510(k)s submitted to FDA prior to the effective date of the regulation. FDA will continue to provide predisclosure notification for those documents under the existing approach for the 10 years following their date of submission to the agency (Executive Order 12600 requires predisclosure notification for 10 years following submission of a document), and will address redaction of these 510(k)s on a case-by-case basis using FDA's current approach. Eighty percent of recent FOIA requests for 510(k)s have been for files less than 2 years old. Consequently, the agency expects most of its current predisclosure notification workload to be significantly reduced over time.

The requirement to provide a redacted 510(k) within 30 days of FDA's clearance is expected to provide 510(k) applicants and holders two significant benefits:

First, this approach would permit applicants to consider and address FOIA disclosure issues during and immediately following the development and assembly of the 510(k), while the expert team that contributed to the development of the 510(k) is available and engaged. FDA believes it will be significantly easier and less expensive for the applicant to deal with FOIA disclosure issues at an early stage rather than having to reassemble experts to review the 510(k) and resolve disclosure issues at some indeterminate time in the future.

Second, FDA believes this approach would permit applicants to have a larger voice in determining what information would be protected from disclosure. Indeed, this approach recognizes that the firm is in a uniquely well-qualified position to identify trade secret and confidential commercial information relating to its own 510(k) submission. Currently, FDA assumes the entire responsibility for designating what information is considered trade secret or other confidential information in a 510(k) when it cannot locate the current owner of the 510(k) or when the owner fails to respond to predisclosure notification within an appropriate time. Because FDA is unlikely to have all the information that would be available to the submitter, FDA may not identify trade secret and confidential commercial information in the 510(k) in the same way as the 510(k) holder would have done.

In addition to these two direct benefits, device applicants would also benefit indirectly from the approach set forth in the proposed rule because FDA would be able to free some resources it currently spends on efforts to determine what information should be protected from disclosure. Therefore the focus would be on those resources instead on activities more directly related to the device review process.

The proposed rule would benefit FDA in two key ways:

1. It would eliminate the need to routinely provide individual predisclosure notification to 510(k) holders when a 510(k) is requested under FOIA; currently, 510(k) submissions are the only significant category of records maintained by FDA that requires predisclosure notification. Given the significant volume of FOIA requests for 510(k)s and the time and effort required to process them under the current system, adopting the approach established by the proposed rule would significantly improve FDA's ability to provide timely responses to FOIA requests for 510(k)s and at the same time would allow the agency to redirect resources to product reviews and other activities more closely related to the agency's public health mission.

2. As discussed above, the regulation would ensure that the party that is in the best position to identify trade secret and confidential commercial information assumes primary responsibility for redacting that information.

The proposed rule will benefit the public by making information to which the public is entitled available in a more timely manner and at lower cost.

A. Copyrighted Information Provided in a 510(k)

Submitters of 510(k)s occasionally provide copyrighted materials to FDA in support of their submissions. When a FOIA request is received for a 510(k) that includes copyrighted materials, FDA may include a copy of any of those materials in response to the request, except to the extent that such materials are exempt under FOIA exemption four. FDA's disclosure of nonexempt information contained in copyrighted materials in response to a FOIA request is generally considered a ''fair use under the Copyright Act of 1976 (17 U.S.C. 101

et seq.) and, thus, does not constitute copyright infringement. See 17 U.S.C. 107, and Office of Information and Privacy, U.S. Department of Justice, Copyrighted Materials and the FOIA, *FOIA Update*, Fall 1983, at pp. 3 to 5.

The EFOIAA amend FOIA to require Federal agencies to make certain FOIA responses available to the public ''by computer telecommunications or *** other electronic means,'' such as posting the FOIA response on the Internet. The Department of Justice has advised Federal agencies that when records are made available through electronic means such as the Internet, the agency ''should guard against the possibility that such extraordinarily wide dissemination of the record *** might be regarded as copyright infringement.'' See U.S. Department of Justice, *Amendment Implementation Questions*, *FOIA Update*, Winter 1997, at pp. 3 to 4.

FDA intends to make all redacted 510(k)s available through the Internet, regardless of whether a FOIA request has been received. This will make the information in those 510(k)s available to the public more rapidly and without having to pay fees which may be assessed when FDA responds to a FOIA request. FDA recognizes the need to avoid infringing copyrights when providing redacted 510(k)s through the Internet, and believes that it can provide appropriate protection of copyrighted materials by distinguishing between two categories of materials: Those whose copyright is owned by the applicant (e.g., an operating manual for a device) and those whose copyright is owned by another person (e.g., a copy of an article from a medical journal).

Under the proposed rule, copyrighted materials whose copyright is owned by a person other than the applicant must be placed in a single appendix, as required by proposed § 807.90(e), and listed in a bibliography, as required by proposed § 807.87(k). These copyrighted materials may not be included in any other portion of the 510(k). They may be referred to at any point in the 510(k) by citing the appropriate entry in the bibliography of copyrighted materials. FDA will not release the appendix containing copyrighted materials as part of a redacted 510(k) made available through FDA's Internet site, but would release the bibliography of materials included in the appendix.

Copyrighted materials whose copyright is owned by the applicant may be included, at the applicant's discretion, in any portion of a 510(k). FDA would treat these materials in the same manner as any other information submitted in a 510(k) and would include them in any redacted 510(k) made available through FDA's Internet site. FDA also intends to include a warning concerning the need to respect copyrights with all copyrighted materials the agency provides through the Internet. An applicant who is concerned about possible copyright infringement by persons who obtain a redacted 510(k) from FDA's web site may wish to clearly indicate when included material is copyrighted or reformat the information prior to submitting a 510(k) to avoid submitting copyrighted materials.

FDA recognizes that there is some uncertainty concerning the most appropriate method of protecting copyrighted materials included in a 510(k). For that reason, FDA is requesting comments on both the approach set forth in the proposed rule and on alternative approaches. Possible alternatives include, but are not limited to, the following:

FDA could permit copyrighted materials from any source to be included anywhere in the 510(k) and could include those materials with the redacted 510(k) made available through the agency's Internet site, while providing a clear and prominent warning to persons who download the redacted 510(k) that they must avoid infringing copyrights and may not make use of any copyrighted material unless such use would be a ''fair use.''

FDA could require explicit consent from each copyright holder, permitting FDA to release those copyrighted materials through the agency's Internet site as part of the redacted version of the 510(k). An applicant would not be permitted to submit copyrighted material without providing the required consent. If a copyright holder refuses to provide the required consent, the applicant would be required to reformat or summarize the relevant information from copyrighted materials prior to submitting the 510(k) for clearance.

FDA could prohibit the inclusion of any copyrighted materials whose copyright is owned by the applicant or by any person who prepared the materials at the request of the applicant unless the applicant or its agent consents to release of the material on FDA's Internet site. Applicants who did not provide the required consent would have to reformat the information to avoid the need to submit the copyrighted material. Applicants would be permitted to submit copyrighted materials from medical journals and other independent sources by including them in a separate appendix and listing them in a bibliography.

FDA has also requested that the Department of Justice provide its opinion concerning FDA's proposed approach. FDA will consider the Department of Justice's response and any comments received on FDA's proposed approach and alternative approaches in preparing a final rule.

B. Implementation and Enforcement

Under the proposed rule, FDA would not routinely review each redacted 510(k) to ensure that the applicant has redacted all confidential commercial information potentially eligible for protection. In addition, except for cases of clearly abusive redactions (e.g., a claim by a submitter that an entire file is exempt from disclosure), FDA will rely on parties that request a 510(k) (through FOIA or other channels) to raise any issue of excessive redaction. If FDA learns that an applicant has inappropriately redacted information not eligible for protection from disclosure under FOIA, FDA may require the applicant to resubmit an appropriately redacted version, or may release the inappropriately redacted information and pursue enforcement action. This approach will enable FDA to provide information more rapidly and focus more of its resources on device review.

FDA retains exclusive authority to make final determinations concerning whether a redaction is permitted under FOIA and is not delegating this authority to any person required to submit a redacted 510(k). Failure to provide a redacted version of a 510(k) in accordance with a commitment to submit a redacted 510(k) made under § 807.87(j) would be a prohibited act under sections 301(p) and (q) of the act (failure to provide any information required by section 510(k) and failure or refusal to furnish information required under section 519 of the act, records and reports on devices), 21 U.S.C. 331(p) and (q), and may result in FDA enforcement action, including administrative civil money penalties of up to $15,000 per violation (21 U.S.C. 333(f)). Some of the resources currently devoted to identifying what information should be protected from disclosure could be redirected, when necessary, to compliance actions against submitters who do not follow the new rule.

C. Relation to Requirement for a 510(k) Summary or 510(k) Statement

Section 513(i)(3) of the act requires a 510(k) applicant to include an adequate summary of any information respecting safety and effectiveness (''510(k) summary'') with each 510(k) submission or to state that such information will be

made available upon request of any person (''510(k) statement''). Applicants who choose to include a 510(k) statement in lieu of a 510(k) summary must respond to written requests by an individual for a copy of the 510(k), excluding patient identifiers and trade secret and confidential commercial information, within 30 days of receipt of the request. The information to be made available to a requestor is ''a duplicate of the premarket notification submission including any adverse safety and effectiveness information but excluding all patient identifiers and trade secret or confidential commercial information, as defined in § 20.61'' (21 CFR 807.3(o)). Holders of 510(k)s may not charge requestors for compiling and providing this information. Noncompliance with the 510(k) statement is a prohibited act under section 301(p) of the act.

The information which a 510(k) submitter must provide to requestors when it elects to submit a 510(k) statement is the same information that would be required to be submitted to FDA under this proposed regulation, that is, a redacted 510(k). To avoid imposing redundant burdens on 510(k) submitters, FDA will, at the submitter's option, assume the burden of responding to requests for safety and effectiveness information made under section 513(i) of the act. Submitters who have submitted an appropriately redacted 510(k) to FDA will be permitted under proposed § 807.93(d) to refer all such requests to FDA's Internet site (at http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfpmn/search.cfm). Assuming the submitter has provided an appropriately redacted 510(k) that meets FDA's requirements, all the 510(k) submitter will be required to do to fulfill its statutory obligation is to inform the requestor that the requested information is available on FDA's Internet site; this response to the requestor would have to be made within 10 days of the request. FDA believes this approach will reduce costs submitters now accrue when they submit a 510(k) statement and that requestors will find it easier to obtain all such information from a single source.

A submitter who wishes to submit a 510(k) summary instead of a 510(k) statement will still be permitted to do so, but submission of a 510(k) summary will not relieve the submitter of its obligation under this proposed rule to submit a redacted 510(k) to FDA. Section 807.93(a) has been amended to provide alternative 510(k) statements. Section 807.93(a)(i) provides the statement to be submitted by a firm that chooses to continue to reply directly to requests for safety and effectiveness information; proposed § 807.93(a)(ii) provides the statement to be submitted by a firm that chooses to have FDA respond on the firm's behalf to such requests.

A person who previously submitted a 510(k) statement, and thereby committed to make available a redacted copy of the 510(k) upon the request of any person, may revoke that statement by submitting a redacted 510(k) to FDA. FDA will then assume the responsibility for responding to requests for the redacted copy on behalf of that person. Submitting a redacted 510(k) to FDA permits persons who have found it burdensome to respond to such requests an opportunity to shift the responsibility to FDA.

III. Request for Comments

Interested persons may, on or before March 22, 2000, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Comments regarding the information collection provisions should be submitted by January 20, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, under the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; and distributive impacts and equity). The Regulatory Flexibility Act requires an analysis of regulatory options that would minimize any significant impact of a rule on small entities unless an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities. Section 202 of the Unfunded Mandates Reform Act requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal Governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation).

The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in Executive Order 12866. The proposed rule is limited to minimize its impact in two significant ways: (1) There is no retrospective effect, because the regulation will not apply to premarket notifications received by FDA prior to the effective date of the regulation, and (2) it will not apply to premarket notifications that were not found substantially equivalent or which were withdrawn. FDA believes there will be no long-term impact on most persons whose premarket notifications are found substantially equivalent because the primary effect of the regulation will affect only the timing of when a redacted version will be required.

FDA currently bears the burden of redacting 35 percent of premarket notifications requested under FOIA without any input from the applicant, either because the applicant cannot be located or does not respond to predisclosure notification. Therefore, this rule is expected to shift to a great extent the resources needed to redact submissions from FDA to the applicant who is in a much better position to redact the 510(k). FDA estimates that 1,240 submissions are affected and that for each submission it will take manufacturers 2 hours to comply. In addition, submitters of the 4,423 premarket notifications that are found substantially equivalent will spend up to 15 minutes to prepare and submit a statement of compliance with this rule to FDA. Using hourly earnings of $35, FDA estimates the total annual cost of compliance with this proposed rule is approximately $125,500. The hourly earnings are derived from the Statistical Abstract of the United States 1997, Table 672 median annual earnings in 1995 for men in a professional specialty, adjusted for fringe benefits and pay increases (30 percent and 20 percent, respectively). Because these costs are based on no more than 2.25 hours per submission and are spread over many submitters, this rule will not have a significant economic impact on small entities.

FDA further believes that by preparing the redacted version earlier, while the expert team that contributed

to the development of the 510(k) is available and engaged, there may be some long-term savings when compared with the costs of delayed redaction inherent in the current approach.

This rule is not a significant regulatory action as defined by the Executive Order, and is not subject to review under the Executive Order. This rule does not impose any mandates on State, local, or tribal governments, nor is it a significant regulatory action under the Unfunded Mandates Reform Act. Furthermore, the agency certifies that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further regulatory flexibility analysis is required.

VI. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have a practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Addition of Written Commitment to Submit, and Submission of, a Redacted Premarket Notification upon FDA's Finding of Substantial Equivalency

Description: The statutory authority for this proposed regulation includes: (1) The authority to require premarket notification (generally referred to as 510(k)) (21 U.S.C. 360(k)); (2) The Freedom of Information Act (5 U.S.C. 552) (FOIA) because a premarket notification that has been cleared by FDA (found to be substantially equivalent) is subject to public disclosure under 5 U.S.C. 552, which requires Federal agencies to release all agency records, including materials obtained by the agency, except to the extent a FOIA exemption applies; (3) FOIA sections 552(b) and (c), and specifically 552(b)(4), permit withholding of certain information from public disclosure, including ''trade secrets and commercial or financial information obtained from a person and privileged or confidential;'' and (4) section 513(i)(3) of the act requires an adequate summary of information respecting safety and effectiveness to be provided by the submitter of a 510(k) that has been cleared by FDA. In addition, the act requires withholding of trade secret information from the public (21 U.S.C. 331(j)), and the Trade Secrets Act also prohibits disclosure of trade secrets and confidential commercial information unless specifically authorized by law, 18 U.S.C. 1905.

These proposed reporting requirements are intended to provide applicants with an improved opportunity to protect nonpublic information contained in their premarket notifications while facilitating the release of information to which the public is entitled. The proposed rule would preserve scarce FDA resources because it proposes to eliminate the need for FDA to routinely redact any 510(k) submitted after the effective date except to the extent challenges are raised to the redactions made by the applicant or in other cases where the agency finds that the applicant has not provided an appropriately redacted 510(k). The proposed rule also would preserve FDA resources by eliminating the need to routinely provide individual predisclosure notification and followup to 510(k) holders when a 510(k) is requested. The proposed written commitment to submit a redacted 510(k) is intended to provide FDA with assurance that the applicant agrees to provide the redacted 510(k) within 30 days of FDA issuing its substantial equivalence order.

The proposed rule would require the premarket submission to include a written commitment from the submitter agreeing to provide a redacted version of their 510(k) (from which those portions that contain ''trade secrets and commercial or financial information obtained from a person and privileged or confidential or protected personal privacy information'' are deleted) within 30 days of FDA issuing its order of substantial equivalence, together with a redacted copy of the 510(k).

Description of Respondents: Businesses or other for profit organizations.

FDA estimates the burden of this collection of information as follows:

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
807.87(j) and 807.91	4,423	1	4,423	0.25	1,106
807.95(f)	3,675	1	3,675	2.00	7,350
Total Hours				2.25	8,456

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

Several steps were performed by FDA to derive the burden hour estimates. FDA estimated the number of respondents by first taking the number of 510(k)s filed and cleared during FY 1998 (4,656) and reducing those numbers by roughly 5 percent because the number of 510(k)s filed in the past few years has been decreasing at approximately that rate (6,434 510(k)s were received during FY 94, compared with 4,656 during FY 98; 510(k) receipts have decreased each year since FY 94). The projected number of 510(k)s filed provides the number of respondents (approximately 4,423) affected by proposed § 807.87(j).

To determine the number of respondents affected by proposed § 807.95(f), FDA estimated the number of 510(k)s expected to be cleared (approximately 3,675), using the methodology previously described.

FDA then estimated the amount of hours per response. The estimate for proposed § 807.87(j) is based on FDA's professional judgment. The estimate for proposed § 807.95(f) is based on FDA's direct experience in redacting 510(k)s. FDA then multiplied the total annual responses by the hours per response to obtain the total hours. The hours per response includes the amount of time to add the statement to the premarket submission and to review and redact the premarket submission. There are no capital or operating and maintenance costs associated with this information collection.

In compliance with section 3507(d) of the PRA (44 U.S.C. 3507(d)), FDA has submitted the information collection provisions of this proposed rule to OMB for review. Interested persons are requested to send comments regarding information collection by January 20, 2000, to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

List of Subjects in 21 CFR Part 807

Confidential business information, Imports, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 807 be amended as follows:

PART 807—ESTABLISHMENT REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS AND INITIAL IMPORTS OF DEVICES

1. The authority citation for 21 CFR part 807 continues to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 360, 360c, 360e, 360i, 360j, 371, 374.

2. Section 807.87 is amended by redesignating paragraphs (j), (k), and (l), as paragraphs (l), (m), and (n); and by adding new paragraphs (j) and (k) to read as follows:

§ 807.87 Information required in a premarket notification submission.

* * * * *

(j) A written commitment, as described in § 807.91 that the submitter will provide to FDA, no later than 30 days after the date of the FDA order declaring the device to be substantially equivalent under § 807.100(a)(1), a copy of the premarket notification submission, with all information that is exempt from public disclosure in accordance with part 20 of this chapter redacted in accordance with § 807.95(f).

(k) A bibliography of all copyrighted materials included in the premarket notification submission.

* * * * *

3. Section 807.90 is amended by adding paragraph (f) to read as follows:

§ 807.90 Format of a premarket notification submission.

* * * * *

(f) Include any copies of copyrighted materials in a single appendix, which shall be the final section of the premarket notification. Copyrighted materials whose copyright is not owned by the applicant shall not be included in any other section of the premarket notification.

4. Section 807.91 is added to subpart E to read as follows:

§ 807.91 Commitment to submit a redacted 510(k).

(a) A statement committing to submit a redacted 510(k) shall state as follows:

I certify that, in my capacity as the (position held in company by person required to submit the premarket notification, preferably the official correspondent in the firm) of (company name), I will submit to FDA, no later than 30 days after the date of an FDA order under § 807.100(a)(1) declaring this device to be substantially equivalent, a redacted copy of the entire premarket notification as required by § 807.95(f).

(b) The statement in paragraph (a) of this section should be signed by the certifier, made on a separate page of the premarket notification submission, and clearly identified as ''Commitment to Submit a Redacted 510(k).''

5. Section 807.93 is amended by revising paragraph (a) and by adding paragraphs (d) and (e) to read as follows:

§ 807.93 Content and format of a 510(k) statement.

(a)(1) A 510(k) statement submitted as part of a premarket notification shall state as follows (choose one):

(i) Option 1—For firms that will directly respond to all requests for information:

I certify that, in my capacity as (the position held in company by person required to submit the premarket notification, preferably the official correspondent in the firm), of (company name), I will make available all information included in this premarket notification on safety and effectiveness within 30 days of request by any person if the device described in the premarket notification submission is determined to be substantially equivalent. The information I agree to make available will be a duplicate of the premarket notification submission, including any adverse safety and effectiveness information, but excluding all patient identifiers, and trade secret and confidential commercial information, as defined in § 20.61.

(ii) Option 2—For firms that choose to have FDA respond on the firm's behalf to all requests for information:

I certify that, in my capacity as (the position held in company by person required to submit the premarket notification, preferably the official correspondent in the firm), of (company name), I will refer all requests for information included in this premarket notification to FDA's Internet site (http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfpmn/search.cfm) within 10 days of request by any person if the device described in the premarket notification submission is determined to be substantially equivalent.

(2) The statement in paragraph (a)(1)(i) of this section should be signed by the certifier, made on a separate page of the premarket notification submission, and clearly identified as ''510(k) statement.''

(3) The statement in paragraph (a)(1)(ii) of this section should be signed by the certifier, made on a separate page of the premarket notification submission, and clearly identified as ''Commitment to Refer 510(k) Requests to FDA.''

* * * * *

(d) At the option of a 510(k) submitter who has elected to submit the statement provided in paragraph (a)(1)(ii) of this section and who has submitted an appropriately redacted 510(k) to FDA under § 807.95(f), all requests received by the submitter for information included in paragraph (a) of this section may be satisfied by referring the requestor to FDA's Internet cite.

(e) A previously submitted 510(k) statement may be revoked any time, subject to the following requirements:

(1) A revocation of a 510(k) statement is made by submitting a copy of all information submitted with, or incorporated by reference in, the premarket submission, from which information that is exempt from public disclosure under part 20 of this chapter has been redacted.

(2) Redactions shall be made as specified by § 807.95(f).

(3) The redacted copy is to be sent to FDA's Center that reviewed the 510(k) at the appropriate address provided in § 807.95(f)(4).

(4) A revocation of a 510(k) statement becomes effective 30 days after it has been submitted to FDA. The submitter must respond to all requests for information received prior to the effective date.

6. Section 807.95 is amended by adding paragraph (f) to read as follows:

§ 807.95 Confidentiality of information.

* * * * *

(f)(1) Not later than 30 days after the date of the FDA order issued under § 807.100(a)(1) declaring a device to be

substantially equivalent, the submitter shall send to FDA a copy of all information submitted with, or incorporated by reference in, a premarket submission, from which information that is exempt from public disclosure under part 20 of this chapter has been redacted in one of the following two ways:

(i) The information exempt from disclosure has been physically obscured so as to render it illegible, e.g., by covering the text or figure with black ink.

(ii) The information exempt from disclosure has been omitted. In such cases, the extent of the deletions shall be described, e.g., ''Pages 12 through 15 have been deleted.''

(2) Whenever copyrighted materials are obscured or omitted, a reference to the bibliographic entry identifying the material under § 807.87(k) shall be included at the point where the materials originally appeared in the submission.

(3) The redacted copy may be submitted on a disk as a portable document format (.pdf) file.

(4) The redacted copy is to be sent to the center that reviewed the 510(k) at the appropriate address: Food and Drug Administration, Center for Devices and Radiological Health (HFZ–82), 2098 Gaither Rd., Rockville, MD 20850, or Food and Drug Administration, Center for Biologics Evaluation and Research (HFM–99), 11401 Rockville Pike, Rockville, MD 20852.

Dated: December 10, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–33003 Filed 12–20–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–99–6190]

RIN 2125–AE67

Traffic Control Devices on Federal-Aid and Other Streets and Highways; Color Specifications for Retroreflective Sign and Pavement Marking Materials

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA proposes to revise its color specifications for retroreflective signing materials. This revision would include daytime and nighttime specifications for both assigned and unassigned colors found in the Manual on Uniform Traffic Control Devices (MUTCD). Color specifications for fluorescent colors and pavement marking material would also be included.

DATES: Comments must be received on or before June 21, 2000.

ADDRESSES: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Huckaby, Office of Transportation Operations (202) 366–9064, or Mr. Raymond Cuprill, Office of the Chief Counsel (202) 366–1377, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. Dockets, Room PL–401 by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

The MUTCD is incorporated by reference in 23 CFR. The color specifications found in the appendix to subpart F of part 655 of 23 CFR are incorporated by reference in the MUTCD.

The current specifications for the color of retroreflective sign sheeting were determined on the basis of material available more than 15 years ago. Since then, new microprismatic material has been commercially available and the original CIE Illuminant C [1] has been replaced with CIE Illuminant D 65. In addition, an extensive international effort is in progress to specify the nighttime appearance of retroreflective materials. Lastly, expanding the specifications to include fluorescent materials is also necessary at this time. In addition to revising the daytime color specifications for retroreflective sign sheeting material used primarily for traffic signs, color specifications for pavement markings and markers would be added. The first introduction of the color specification for nighttime use of these materials would be included in this revision. Instrumentation for measuring retroreflectivity is now available for in-situ measurements as well as ease in quality control and lab measurements. Color instruments are available for daytime measurements of traffic signs and pavement markings. New pigment formulations, especially for pavement marking material, are now in use because of environmental concerns. The American Traffic Safety Services Association assisted FHWA in soliciting samples for measurement from sign sheeting material and pavement marking material manufacturers. Samples were received from 11 manufacturers. Several types of pavement marking materials were received, *i.e.,* paint, tape, epoxy, and polyester. Polycarbonate and other signing materials were not included in the sampling. Manufacturers of polycarbonate and other material may provide signs that conform to the color limits stated for sign sheeting material.

Definitions

The following discussion on the procedures followed to develop this proposed revision contains abbreviations which are defined as follows:

Material types:
- eg = enclosed lens sheeting material
- encp = encapsulated lens sheeting material
- seg = super-engineering grade material
- up = microprismatic sheeting material (or vinyl)
- exp = exposed glass spheres for pavement marking materials

Measurement units:
- mm = millimeter

[1] Illuminant C is a standard from the International Commission on Illumination (CIE) for filtered tungsten illumination that simulates average daylight with a color temperature of 6,774 degrees K. Illuminant D 65 is a standard representing daylight with a correlated color temperature of 6504 K.

nm = nanometer

Colors:

B = blue; G = green; W= white; BR = brown; BK = black; R = red; O = orange; Y = yellow; YG = yellow-green; F as a prefix means the material is fluorescent.

Chromaticity coordinates and luminous factors: x and y for a 2° CIE Standard Photopic Observer.

CIE Illuminant D 65 for daytime measurements and CIE Illuminant A for nighttime measurements.

Y CIE tristimulus value for the luminous factor (total luminous factor for fluorescent materials). Y_F CIE tristimulus value for the fluorescence luminance factor. Nighttime chromaticity coordinates are given only for x and y as the coefficient of retroreflection is specified elsewhere.

The color boxes are given by corner coordinates in x and y.

Measurement Equipment and Procedures

Daytime Measurements and Equipment

All of the measurements involved in this proposed revision were performed at the FHWAs Turner-Fairbank Highway Research Center (TFHRC) in McLean, Virginia, with the lone exception being the fluorescent measurements made at Labsphere Corp. in North Sutton, New Hampshire. The facility used at the TFHRC was the Visibility and Photometric Laboratory. Daytime measurements were made in the facility using a Hunter LabScan Model II with a serial number 14277. This instrument was loaned to the Visibility and Photometric Laboratory by Hunter Associates in Reston, Virginia. The instrument uses a scanning interference filter and optics to rapidly scan the visible spectrum. The sample port is about 30mm in diameter and is illuminated by a filtered tungsten-halogen light source normal to the sample. The reflected light is collected by a series of fiber optics at 45° arranged circumferentially to the sample normal. The spectral data from 380 to 780nm is then analyzed and the CIE Chromaticity Coordinates x, y and the luminance factor Y for CIE Illuminant D 65 and the 2° CIE Standard Photopic Observer are computed and stored in memory in the computer. This type of instrument is widely used in many material and testing laboratories in the United States and was chosen for this reason.

Procedure

Each sample was measured in two locations on the sample, rotating the sample in its own plane for each measurement. The averages of the two readings for each sample were automatically determined and are the values used in this report. Calibration of the Labscan II was performed using a certified white reference standard number LS–14277 with tristimulus values of X=79.79; Y=84.47; and Z=90.59. The reference standard was calibrated traceable to the National Institute of Standards and Technology in August 1996. The data was taken for the 10° Standard Observer and calculated for the 2° observer after collection.

For the fluorescent samples, measurement was performed on Labspheres Bispectral Fluorescence Colorimeter Model BFC–450 Serial Number 2. The illumination and collection geometry was 45/0. This instrument consists of two monochromators with the irradiating one using a Xenon light source and the other a rapid scanning array detector type. The sample port is 32mm in diameter with the illumination area 25mm in diameter. The excitation irradiance wavelength range is from 300–780nm and the emission wavelength range is from 380–780nm. Computation of the reflectance luminance factor and the fluorescence luminance factor is automatically performed in the software for CIE D 65 Standard Illuminant and the CIE 2° Standard Photopic Observer. The total chromaticity in 1931 coordinates is also given. The data used in this report is the combined chromaticity coordinates for the total luminance factor. Calibration is performed against certified white diffuse standards.

Nighttime Measurements and Equipment

The ART Model 940D Computer Controlled Photometric Range System was used for the nighttime measurements. The illumination source was a 150 W Oriel Xenon arc lamp projector and the collection used an Optronics, Model 754 SN 9420–1009 Spectroradiometer. The double monochromator model 754–0–PMT SN 94102011 was used for the spectrum analysis. The wavelength range was set at 380–780nm with an interval of 10nm. The high-voltage on the multiplier phototube was varied depending on the sample size and efficiency. The absolute value of the radiance is not required for chromaticity measurements and the coefficient of retroreflection determination is not a part of this report. The optical collection of the retroreflected radiant flux was obtained using a large 65mm diameter achromat lens and quartz fiber optics circle to line configuration as input to the double monochromator. The Xenon light source was positioned at an angle of approximately 0.33° from the collection optics. The goniometer for the sheeting was set at 5° to the optical axis of the light source. The goniometer is a photometer for measuring the directional light distribution characteristics of sources, media, and surfaces. For the pavement marking materials the collection optics were raised to 1.0° from the light source and the goniometer set at 88.76° approximating 30 meter geometry. Nighttime color specification limits for red and blue pavement marking material were not included in Table 6. Samples received from the manufacturers were too small in size to provide reliable measurements for nighttime specifications.

Procedure

Calibration of the spectroradiometer was performed using a certified white diffuse standard for the 100° line and the zero or dark value was obtained with the light source illuminating a black sample. Compensation for the ambient level is automatically performed in the software. The relative spectral reflectance data over the above wavelength range was stored and the chromaticity computation was automatically performed.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. The FHWA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. The FHWA may, however, issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file, in the docket, relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material.

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

The FHWA has determined that this action does not constitute a significant regulatory action within the meaning of E.O. 12866, nor is it considered significant under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal and

will not have a significant economic affect on small businesses, industry, or highway agencies. The color revisions will not be noticeable to the general public, however, the quality of the color in the signs will improve. This rulemaking proposes to revise the color specifications currently stated in 23 CFR which are also incorporated by reference in the Manual on Uniform Traffic Control Devices. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposal on small entities. Based on its evaluation of this proposal, the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined that this action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed revision will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

The proposal in this document does not contain information collection requirements for the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this proposed revision would not have any effect on the quality of the environment.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose a Federal mandate resulting 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 (2 U.S.C. 1532).

Regulation Identification Number

A regulation identification Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

Issued on: December 14,1999. —

Kenneth R. Wykle,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 23, Code of Federal Regulations, part 655, as set forth below:

PART 655—[AMENDED]

1. Revise the authority citation for part 655 to read as follows:

Authority: 23 U.S.C. 109(d), 114(a), 315, and 402(a); 49 CFR 1.48.

2. Revise the appendix to subpart F to read as follows:

Appendix to Subpart F of Part 655—Alternate Method of Determining the Color of Retroreflective Sign Materials and Pavement Marking Materials

1. Although the FHWA Color Tolerance Charts depreciate the use of spectrophotometers or accurate tristimulus colorimeters for measuring the daytime color of retroreflective materials, recent testing has determined that 0/45 or 45/0 spectroradiometers and tristimulus colorimeters have proved that the measurements can be considered reliable.

2. The daytime color of non-fluorescing retroreflective materials may be measured in accordance with ASTM Test Method E 1349, ''Standard Test Method for Reflectance Factor and Color by Spectrophotometry Using Bidirectional Geometry'' or ASTM Test Method E 1347, (Replaces E 97) ''Standard Test Method for Color and Color-Difference Measurement by Tristimulus (Filter) Colorimetry.'' The latter test method specifies bidirectional geometry for the measurement of retroreflective materials. The geometric conditions to be used in both test methods are 0/45 or 45/0 circumferential illumination or viewing. Uniplanar geometry is not recommended for material types IV or higher (designated microprismatic). The CIE standard illuminant used in computing the colorimetric coordinates shall be D65 and the 2° Standard CIE Observer shall be used.

3. For fluorescent retroreflective materials ASTM E 991 may be used to determine the chromaticity provided that the D65 illumination meets the requirements of E 991. This practice, however, allows only the total luminous factor to be measured. The luminescent luminous factor must be determined using bispectral fluorescent colorimetry. Commercial instruments are available which allow such determination. Some testing laboratories are also equipped to perform these measurements.

4. For nighttime measurements CIE Standard Illuminant A shall be used in computing the colorimetric coordinates and the 2° Standard CIE Observer shall be used.

5. Average performance sheeting is identified as Types I and II sheeting and high performance sheeting is identified as Type III. Super-high intensity sheeting is identified as Types V, VI and VII in ASTM D 4956.

6. The following six tables depict the 1931 CIE Chromaticity Diagram x and y coordinates for the corner points defining the recommended color boxes in the diagram. Lines drawn between these corner points specify the limits of the chromaticity allowed in the 1931 Chromaticity Diagram. Color coordinates of samples that lie within these lines are acceptable. For blue and green colors the spectrum locus is the defining limit between the corner points located on the spectrum locus:

TABLE 1 TO PART 655, SUBPART F.—DAYTIME COLOR SPECIFICATION LIMITS FOR RETROREFLECTIVE MATERIALS WITH CIE 2° STANDARD OBSERVER AND 45/0 (0/45) GEOMETRY AND CIE D65 STANDARD ILLUMINANT

Color	Chromaticity coordinates (corner points)								Luminance factor range Y in percent	
	1		2		3		4			
	x	y	x	y	x	y	x	y	Min.[1]	Min.[2]
White	.355	.355	.305	.305	.285	.325	.335	.375	≥35	≥27
Red	.648	.351	.735	.265	.629	.281	.565	.346	≥5	≥3
Orange	.562	.350	.645	.355	.570	.429	.506	.404	≥17	≥12
Brown	.430	.340	.430	.390	.518	.434	.570	.382	≥3–10	≥3–10
Yellow	.498	.412	.557	.442	.479	.520	.438	.472	≥27	≥16
Green	.026	.399	.166	.364	.286	.446	.207	.771	≥4	≥3
Blue	.078	.171	.150	.220	.210	.160	.137	.038	≥1	≥1
Lt. Blue	.180	.260	.240	.300	.270	.260	.230	.200	≥15	≥15
Yellow/green	.387	.610	.460	.540	.421	.486	.368	.539	≥	≥50
Purple	.302	.064	.307	.202	.374	.247	.457	.136	≥3	≥2
Coral*	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Black	.355	.355	.305	.305	.285	.325	.335	.375	≥3 max.	.....

* No coordinates recommended for this color.
[1] Types I and II.
[2] Types III–VII.

TABLE 2 TO PART 655, SUBPART F.—NIGHTTIME COLOR SPECIFICATION LIMITS FOR RETROREFLECTIVE MATERIALS WITH CIE 2° STANDARD OBSERVER AND OBSERVATION ANGLE = 0.33°, ENTRANCE ANGLE = +5° (BETA ANGLE 2 AND EPSILON = 0°) AND CIE STANDARD ILLUMINANT A

Color	Chromaticity coordinates (corner points)							
	1		2		3		4	
	x	y	x	y	x	y	x	y
White	.475	.452	.360	.415	.392	.370	.515	.409
Red	.650	.348	.620	.348	.712	.255	.....	.....
Orange	.643	.355	.613	.355	.565	.405	.595	.405
Brown	.595	.405	.540	.405	.570	.365	.643	.355
Yellow	.513	.487	.500	.470	.545	.425	.572	.425
Green	.007	.570	.200	.500	.322	.590	.193	.782
Blue	.033	.370	.180	.370	.230	.240	.091	.133
Lt Blue*	.....	.....	.....	.....	.....	.....	.....	.....
Coral*	.....	.....	.....	.....	.....	.....	.....	.....
Purple*	.....	.....	.....	.....	.....	.....	.....	.....

*No coordinates recommended for this color.

TABLE 3 TO PART 655, SUBPART F.—DAYTIME COLOR SPECIFICATION LIMITS FOR FLUORESCENT RETROREFLECTIVE MATERIAL WITH CIE 2° STANDARD OBSERVER AND 45/0 (0/45) GEOMETRY AND CIE D65 STANDARD ILLUMINANT

Color	Chromaticity coordinates (corner points)								Luminance factor limits %	
	1		2		3		4		Y	Y_F
	x	y	x	y	x	y	x	y	Min	Max
Fluorescent Orange	.562	.350	.645	.355	.570	.429	.506	.404	20	10
Fluorescent Yellow	.557	.442	.498	.412	.438	.472	.479	.520	35	15
Fluorescent Yellow/Green	.387	.610	.368	.539	.421	.486	.460	.540	50	20
Fluorescent Green	.320	.590	.320	.682	.210	.770	.230	.670	30	15

TABLE 4 TO PART 655, SUBPART F.—NIGHTTIME COLOR SPECIFICATION LIMITS FOR FLUORESCENT RETROREFLECTIVE MATERIAL WITH CIE 2° STANDARD OBSERVER AND OBSERVATION ANGLE = 0.33°, ENTRANCE ANGLE =+5° (BETA ANGLE 2 AND EPSILON = 0°) AND CIE STANDARD ILLUMINANT A

Color	Chromaticity coordinates (corner points)							
	1		2		3		4	
	x	y	x	y	x	y	x	y
Fluorescent Orange	.625	.375	.669	.331	.636	.330	.589	.376
Fluorescent Yellow	.554	.445	.610	.390	.569	.394	.526	.437

TABLE 4 TO PART 655, SUBPART F.—NIGHTTIME COLOR SPECIFICATION LIMITS FOR FLUORESCENT RETROREFLECTIVE MATERIAL WITH CIE 2° STANDARD OBSERVER AND OBSERVATION ANGLE = 0.33°, ENTRANCE ANGLE =+5° (BETA ANGLE 2 AND EPSILON = 0°) AND CIE STANDARD ILLUMINANT A—Continued

Color	Chromaticity coordinates (corner points)							
	1		2		3		4	
	x	y	x	y	x	y	x	y
Fluorescent Yellow/Green	.480	.520	.550	.449	.523	.440	.473	.490
Fluorescent Green	.007	.570	.200	.500	.322	.590	.193	.782

TABLE 5 TO PART 655, SUBPART F.—DAYTIME COLOR SPECIFICATION LIMITS FOR PAVEMENT MARKINGS MATERIAL WITH CIE 2° STANDARD OBSERVER AND 45/0 (0/45) GEOMETRY AND CIE D65 STANDARD ILLUMINANT

Color	Chromaticity coordinates (corner points)								Y values %			
	x	y	x	y	x	y	x	y	With Glass Beads		Without Glass Beads	
									Min	Max	Min	Max
White	.355	.355	.305	.305	.285	.325	.335	.375	60	.....	70	.....
Yellow	.560	.440	.460	.400	.420	.440	.490	.510	30	.....	35	.....
Red	.480	.300	.690	.315	.620	.380	.480	.360	6	15	.....	.....
Blue	.105	.100	.220	.180	.200	.260	.060	.220	5	14	.....	.....

TABLE 6 TO PART 655, SUBPART F.—NIGHTTIME COLOR SPECIFICATION LIMITS FOR PAVEMENT MARKING RETROREFLECTIVE MATERIAL WITH CIE 2° STANDARD OBSERVER AND OBSERVATION ANGLE = 1.05°, ENTRANCE ANGLE = 88.76° (BETA ANGLE 2 AND EPSILON = 0°) AND CIE STANDARD ILLUMINANT A

Color	Chromaticity coordinates (corner points)							
	1		2		3		4	
	x	y	x	y	x	y	x	y
White	.480	.410	.430	.380	.405	.405	.455	.435
Yellow	.575	.425	.490	.410	.460	.440	.510	.490

[FR Doc. 99–32910 Filed 12–20–99; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–99–6298]

RIN 2125–AE66

Revision of the Manual On Uniform Traffic Control Devices; Regulatory Signs, Low Volume Rural Roads, and Traffic Control for Highway-Rail Grade Crossings

AGENCY: Federal Highway Administration (FHWA), DOT

ACTION: Notice of proposed amendments to the Manual on Uniform Traffic Control Devices (MUTCD); request for comments.

SUMMARY: The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, approved by the Federal Highway Administrator, and recognized as the national standard for traffic control on all public roads. The FHWA announced its intent to rewrite and reformat the MUTCD on January 10, 1992, at 57 FR 1134.

This document proposes new text for the MUTCD in Chapter 2B—Regulatory Signs, Part 5—Traffic Control Devices for Low-Volume Rural Roads, and Part 8—Traffic Control for Highway-Rail Grade Crossings (update information). The purpose of this rewrite effort is to reformat the text for clarity of intended meanings, to include metric dimensions and values for the design and installation of traffic control devices, and to improve the overall organization and discussion of the contents in the MUTCD. The proposed changes included herein are intended to expedite traffic, promote uniformity, improve safety, and incorporate technology advances in traffic control device application.

DATES: Submit comments on or before June 30, 2000.

ADDRESSES: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: For information regarding the notice of proposed amendments contact Ms. Linda Brown, Office of Transportation Operations, Room 3408, (202) 366–2192, or Mr. Raymond Cuprill, Office of Chief Counsel, Room 4217, (202) 366–0834, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL 401, by using the universal resource locator (URL): *http/dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this notice of proposed amendment may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

The text for the proposed sections of the MUTCD is available from the FHWA Office of Transportation Operations (HOTO–1) or from the FHWA Home Page at the URL: *http://www.fhwa.dot.gov/operations/mutcd*. Please note that the current proposed sections contained in this docket for MUTCD Chapters 2B, Part 5, and Part 8 will take approximately 8 weeks from the date of publication before they will be available at this web site.

Background

The 1988 MUTCD with its revisions are available for inspection and copying as prescribed in 49 CFR Part 7. It may be purchased for $57.00 (Domestic) or $71.25 (Foreign) from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954, Stock No. 650–001–00001–0. This notice is being issued to provide an opportunity for public comment on the desirability of proposed amendments to the MUTCD. Based on the comments received and its own experience, the FHWA may issue a final rule concerning the proposed changes included in this notice.

The National Committee on Uniform Traffic Control Devices (NCUTCD) has taken the lead in this effort to rewrite and reformat the MUTCD. The NCUTCD is a national organization of individuals from the American Association of State Highway and Transportation Officials (AASHTO), the Institute of Transportation Engineers (ITE), the National Association of County Engineers (NACE), the American Public Works Association (APWA), and other organizations that have extensive experience in the installation and maintenance of traffic control devices. The NCUTCD voluntarily assumed the arduous task of rewriting and reformatting the MUTCD. The NCUTCD proposal is available from the U.S. DOT Dockets (see address above). Pursuant to 23 CFR Part 655, the FHWA is responsible for approval of changes to the MUTCD.

Although the MUTCD will be revised in its entirety, it is being completed in phases due to the enormous volume of text. The FHWA reviewed the NCUTCD's proposal for MUTCD Part 3—Markings, Part 4—Signals, and Part 8—Traffic Control for Highway-Rail Intersections. The summary of proposed changes for Parts 3, 4, and 8 was published as Phase 1 of the MUTCD rewrite effort in a previous notice of proposed amendment dated January 6, 1997, at 62 FR 691. The FHWA reviewed the NCUTCD's proposal for Part 1—General Provisions and Part 7—Traffic Control for School Areas. The summary of proposed changes for Parts 1 and 7 was published as phase 2 of the MUTCD rewrite effort in a previous notice of proposed amendment dated December 5, 1997, at 62 FR 64324. The FHWA reviewed the NCUTCD's proposal for Chapter 2A—General Provisions and Standards for Signs, Chapter 2D—Guide Signs for Conventional Roads, Chapter 2E—Guide Signs—Freeways and Expressways, Chapter 2F—Specific Service Signs, and Chapter 2I—Signing for Civil Defense. The summary of proposed changes for Chapters 2A, 2D, 2E, 2F, and 2I was published as Phase 3 of the MUTCD rewrite effort in a previous notice of proposed amendment dated June 11, 1998, at 63 FR 31950. The summary of proposed changes for Chapters 2G—Tourist Oriented Directional Signs, Chapter 2H—Recreational and Cultural Interest Signs, and Part 9—Traffic Control for Bicycles was published as Phase 4 of the MUTCD rewrite effort in a previous notice of proposed amendment dated June 24, 1999, at 64 FR 33802. The summary of proposed changes for Chapter 2C—Warning Signs and Part 10—Traffic Control for Highway-Light Rail Transit Grade Crossings was published as Phase 5 of the MUTCD rewrite effort in a previous notice of proposed amendment dated June 24, 1999, at 64 FR 33806.

This notice of proposed amendments is Phase 6 of the MUTCD rewrite effort and includes the summary of proposed changes for MUTCD Chapter 2B, Part 5, and update information for previously published proposed changes to Part 8. The public will have an opportunity to review and comment on the remaining parts of the MUTCD in a future notice of proposed amendment. The remaining parts include Part 6—Traffic Control for Construction, Maintenance, Utility, and Incident Management and updates to the following previously published parts of the MUTCD: Part 1—Definitions; Part 3— Markings; and Part 4—Signals.

The proposed new style of the MUTCD would be a 3-ring binder with 8–½ x 11 inch pages. Each part of the MUTCD would be printed separately in a bound format and then included in the 3-ring binder. If someone needed to reference information on a specific part of the MUTCD, it would be easy to remove that individual part from the binder. The proposed new text would be in column format and contain four categories as follows: (1) Standards—representing ''shall'' conditions; (2) Guidance—representing ''should'' conditions; (3) Options—representing ''may'' conditions; and (4) Support—representing descriptive and/or general information. This new format would make it easier to distinguish standards, guidance, and optional conditions for the design, placement, and application of traffic control devices. The adopted final version of the new MUTCD will be in metric and English units. Dual units will be shown in the MUTCD particularly for speed limits, guide sign distances, and other measurements which the public must read.

The FHWA invites comments on the proposed text for MUTCD chapter 2B, part 5, and part 8 update. A summary of the proposed significant changes contained in these sections are included in the following discussion:

Discussion of Proposed Amendments to Chapter 2B—Regulatory Signs

The following items are the most significant proposed revisions to Chapter 2B:

1. In Section 2B.1, the FHWA proposes to delete the sentence indicating that all regulatory signs shall be retroreflective or illuminated since this information is covered in Section 2A.8 which provide general requirements for all signs, including regulatory signs.

2. In Section 2B.3, the FHWA proposes to include an explanation of when various sign sizes should be used based on the roadway classification. This information is currently shown in the ''Standard Highway Signs'' book.[1] However, we believe it is worth mentioning in the MUTCD text as well.

3. In Section 2B.3, the FHWA proposes to add Table 2B.1 which

[1] ''Standard Highway Signs,'' FHWA, 1979 (Metric) is included by reference in the 1988 MUTCD. It is available for inspection and copying at the FHWA Washington Headquarters and all FHWA Division Offices as prescribed at 49 CFR part 7.

shows the sign codes, the standard sign sizes, and applicable MUTCD sections for more detailed information. The FHWA believes that having this information in a table format will provide an easy and quick reference for the readers. In an effort to improve sign visibility, the FHWA also proposes to increase the standard letter size for the following signs:

TABLE SHOWING SIGNS WITH PROPOSED INCREASED STANDARD LETTER SIZES

Sign	Code	Proposed standard size
Two-Way Left Turn Only	R3–9b	750mm x 1050mm (30″ x 42″).
Center Lane Buses and HOV 2+ Only	R3–11	1050mm x 1500mm (42″ x 60″).
Do Not Enter	R5–1	900mm x 900mm (36″ x 36″).
Pedestrians and Bicycles Prohibited	R5–10b	900mm x 600mm (36″ x 24″).
Pedestrians Prohibited	R5–10c	750mm x 450mm (30″ x 18″).
One Way	R6–1	900mm x 900mm (36″ x 36″).
One Way	R6–2	900mm x 900mm (36″ x 36″).
Divided Highway	R6–3 and 3a	900mm x 900mm (36″ x 36″).
No Parking/Restricted Times	R7–200	500mm x 450mm (20″ x 18″).
Hitch Hiking Prohibited (symbol)	R9–4a	600mm x 600mm (24″ x 24″).
Left on Green Arrow Only	R10–5	900mm x 1200mm (36″ x 48″).
Use Lane with Green Arrow	R10–8	750mm x 900mm (30″ x 36″).
Left (Right) Turn Signal	R10–10	750mm x 900mm (30″ x 36″).
Left Turn Yield on Green Ball	R10–12	750mm x 900mm (30″ x 36″).
No Trucks Over 7000 lbs Empty Weight	R12–3	750mm x 900mm (30″ x 36″).

4. In Section 2B.4, paragraph 2, the FHWA proposes to require the use of the 4–WAY supplemental plaque (R1–3) at intersections where all approaches are controlled by STOP signs. In the 1988 MUTCD this was a recommended practice. However, the FHWA believes that due to the increased aggressive driving behavior, disregard of STOP signs, and the hazardous nature of these type intersections, the required use of the 4–WAY supplemental plaque will provide additional emphasis and motorist information at these locations.

5. In Section 2B.5, the FHWA proposes to change the title from ''Warrants for Stop Signs'' to ''Stop Sign Application.'' This proposed change attempts to eliminate the misunderstanding created by the term ''warrants'' which has a ''legal sanctions'' connotation. The GUIDANCE provided in Section 2B.5 for installing STOP signs is not intended to be a legal sanction or authorization, but instead is intended to list possible situations where these signs could be appropriate based on an engineering study.

6. In Section 2B.5, paragraph 6, the FHWA proposes to add GUIDANCE to describe the appropriate street to stop traffic in a two-way STOP control situation.

7. In Section 2B.5, paragraph 7, the FHWA proposes to include considerations that may help engineers and other transportation officials decide the appropriate street to install STOP signs at 2–WAY STOP intersections.

8. In Section 2B.5, paragraph 9, the FHWA proposes to include SUPPORT information to clarify to the reader that restrictions on the use of STOP signs as discussed in section 2B.5 also apply to Multiway STOP signs (section 2B.7).

9. In Section 2B.6, paragraph 4, the FHWA proposes to change the following sentence from an OPTION condition to a GUIDANCE condition: ''Stop lines, when used to supplement a STOP sign, should be located at the point where the road user should stop.'' The use of pavement markings helps to reinforce sign and other traffic control device messages. We believe that recommending the use of the STOP line provides the road user with additional information on which to make safe traffic operation decisions.

10. In Section 2B.6, paragraph 5, the FHWA proposes to add a sentence which states that STOP signs should not be placed on the far-side of the intersection. Although this is not new guidance and is shown in many of the typical figures in the 1988 MUTCD, we believe that it is appropriate to include this proposed text to eliminate any ambiguity.

11. In Section 2B.7, the FHWA proposes to add the word ''application'' to the title since this term is more descriptive of the information contained in this section on multi-way stop signs. In Section 2B.7, paragraph 2, the FHWA proposes to add GUIDANCE to recommend that the decision to install Multiway Stop signs should be based on an engineering study.

12. In Section 2B.7, paragraph 2, the FHWA proposes to specifically state that the decision to install multi-way stop signs should be based on an engineering study. Although this recommended GUIDANCE is usually followed, the FHWA believes it is appropriate to include this general practice in the MUTCD text.

13. In Section 2B.7, paragraph 3, the FHWA also proposes to recommend criteria that should be considered in the engineering study. This proposed change also eliminates the misunderstood term ''warrants'' and uses instead the term ''engineering study.'' The recommended criteria are generally consistent with the text in the 1988 MUTCD except for the following proposed changes:

(a) In item 3a which discusses minimum vehicle volumes at intersections where multiway stop signs are considered, the FHWA proposes to change ''500 vehicles per hour'' to ''300 vehicles per hour.'' This proposed change allows more consideration flexibility and allows more intersections to qualify for multiway stop sign installlations.

(b) In item 3b, the FHWA proposes to add bicycle volumes to the combination volume studies of vehicles and pedestrians. Bicycle travel is one of the FHWA's program emphasis areas identified in our strategic plan. The FHWA believes that bicycle travel should be an integral part of traffic control considerations.

(c) In item 4, the FHWA proposes to provide a means for combining data on the accident experience and volume counts when considering the installation of multiway stop signs.

14. The discussion in Section 2B.7, paragraph 3, provides primary criteria for consideration when installing Multiway Stop signs. In Section 2B.7, paragraph 4, the FHWA proposes to include additional supporting criteria for consideration. Also in paragraph 4,

the FHWA proposes to add a crosss-reference to a proposed new section 2C.31 which discusses the optional use of a new ''CROSS TRAFFIC DOES NOT STOP sign'' at multiway stop intersections. This proposed sign may be used where engineering study indicates drivers frequently mistake 2-way and multiway stop controlled intersections.

15. The FHWA proposes to separate the discussion on Yield signs to cover general design and purpose for Yield signs (Section 2B.8); ''Yield Sign Application'' (Section 2B.9); and ''Yield Sign Placement'' (Section 2B.10). This proposed change also avoids the use of the misunderstood term ''warrants.''

16. In Section 2B.10, paragraph 2, the FHWA proposes to change the following sentence from a GUIDANCE condition to a STANDARD condition: ''The YIELD sign shall be located as close as practical to the intersection it regulates, while optimizing its visibility to the road user.'' The FHWA believes that enhancing sign visibility will help improve intersection safety and reduce intersection crashes. This same change is proposed for STOP signs in Section 2B.6, paragraph 2.

17. In Section 2B–8 of the 1988 MUTCD, the following sentence was included: ''YIELD signs should not be used on the through roadway of expressways.'' The FHWA proposes not to include this sentence in the new Section 2B.10, ''Yield Sign Application.'' The reason for not including this sentence is to avoid potential conflict with YIELD signs installed at signalized intersections on expressways for the purpose of controlling right-turn movements.

18. In Section 2B.11, paragraph 2, the FHWA proposes the following revisions to help clarify the design and application of the Truck Speed Sign. The ''TRUCKS 40'' sign currently shown in the 1988 MUTCD is intended to be the supplemental plaque message that is required for use below the Speed Limit Sign (R2–1). The FHWA proposes to assign the ''TRUCKS 40'' supplemental plaque the sign code (R2–2P). The R2–2P supplemental plaque is not to be used independently. The FHWA also proposes to clarify that the legend ''TRUCKS 40'' may also be included within the same panel as the Speed Limit Sign (R2–1).

In addition to the above clarification, the FHWA proposes to modify the 1988 MUTCD to explain that a Truck Speed Sign (R2–2) contains the legend ''TRUCKS 40 MPH'' or ''TRUCK SPEED 40'' and is used independently. The FHWA proposes to develop a design drawing for the R2–2 independent Truck Speed Sign and to include the design in the ''Standard Highway Signs'' book.

19. In Section 2B.11, paragraph 3, the FHWA proposes to designate 3 as the maximum number of speed limits displayed on any one speed limit sign or assembly sign. In the 1988 MUTCD this was recommended GUIDANCE. The FHWA proposes to change this to STANDARD practice because 3 speed limits is the maximum amount of information that the road user can safely read and comprehend.

20. In Section 2B.12, Paragraph 2, the FHWA proposes to add another option for day and night speed limits using changeable message signs that change for traffic and ambient conditions provided that the appropriate speeds are shown at the proper times. This proposed change will allow Intelligent Transportation Systems (ITS) technology for changeable message signs.

21. In Section 2B.14, paragraph 6, the FHWA proposes to include an optional method for installing Reduced Speed Ahead (R2–5 series) signs which are intended to advise road users of the appropriate speed limit change ahead. The proposed optional method discussed in item 2 was submitted by the Minnesota Department of Transportation. The proposed optional method would use an assembly consisting of the Speed Limit Sign (R2–1) with the supplemental legend plaque ''BEGIN'' mounted above the R2–1 sign and the supplemental distance plaque (¼ mile, etc.) mounted below the R2–1 sign. The recommended color for the supplemental plaques is yellow.

22. In Section 2B.15, the FHWA proposes to combine the discussion for the Turn Prohibition and the U-Turn Prohibition signs into one section since they are both related.

23. In Section 2B.15, paragraph 1, the FHWA proposes to reword this sentence and classify it as a STANDARD since the Turn Prohibition Signs (R3–1 to R3–4) are the appropriate and standard signs for use where turns are prohibited.

24. In Section 2B.15, paragraph 5, the FHWA proposes to change the condition for installing turn prohibition signs (R3–1 to R3–4) adjacent to a signal face from an OPTION to GUIDANCE. In situations where signals are present, placing the turn prohibition sign adjacent to the signal face is recommended because it enhances the sign's visibility and improves the road user's ability to see the sign placed in this overhead position.

25. In Section 2B.15, paragraph 6, in addition to recommending the installation of an overhead-mounted turn prohibition sign at signalized intersections, the FHWA proposes to include a sentence stating that installing a post-mounted turn prohibition sign to supplement the overhead sign is an OPTION.

26. In Section 2B.16, paragraph 2, the FHWA proposes to add a new Intersection Lane Control Sign (R3–5a) which may be used to explain to road users that they must stay in the same lane and proceed straight through an intersection.

27. In Section 2B.16, paragraph 3, the FHWA proposes to add a new requirement that whenever lane use control signs are installed, lane-use pavement markings shall also be installed. This requirement would apply whether the lane-use control message was for mandatory or optional traffic movements. In the 1988 MUTCD the use of pavement markings was recommended, but not required, for mandatory movement situations only. This proposed change to require lane-use pavement markings and signs in both mandatory and optional traffic movement situations will benefit the road users by providing additional information to assist them in the decisionmaking tasks involved with perceiving and executing safe and appropriate traffic maneuvers. This proposed change is also consistent with the proposed text for mandatory-turn pavement markings discussed in Chapter 3B.12. Requiring pavement markings along with lane-use control signs means that road users who may not see the sign (particularly ground-mounted signs) may have an opportunity to see the pavement marking and react accordingly. This is a practice that is successfully used in Europe and it is called ''horizontal signing.'' European traffic engineers have found that the redundancy provided by horizontal signing is a very important element of attaining and improving both traffic efficiency and safety for road users. The FHWA proposes a 10 year compliance period based on the effective date of the MUTCD final rule. This would allow States time to implement this proposed change.

28. In Section 2B.16, paragraphs 6 and 7, the FHWA proposes to add language to distinguish between when overhead and ground mounted intersection lane-use control signs are used. The following language is proposed: ''When the number of through lanes for an approach is two or less, the intersection lane-use control signs (R3–5, R3–6, or R3–8) may be either overhead or ground mounted. When the number of approach lanes is three or more, these intersection

lane-use control signs should be mounted overhead.'' This proposed change considers the visibility needs of the road user based on the number of lanes at the intersection approach, particularly in situations where the road user's view may be obstructed by other vehicles in the adjacent lanes.

29. The FHWA proposes to add a new Section 2B.17 that specifically addresses the standard application and placement location for mandatory movement lane-use control signs (R3–5 and R3–7). The FHWA proposes to clarify the placement location for these signs. In paragraph 1, the FHWA proposes to clarify that the word message ''LEFT LANE MUST TURN LEFT'' (R3–7) sign shall be for ground mounting only.

In paragraph 3, the FHWA proposes to change the 1988 MUTCD text to indicate that the ''LEFT OR RIGHT TURN ONLY'' (R3–5) symbol sign can be either ground mounted or overhead mounted. This is also consistent with the proposed language in Section 2B.15, paragraph 5. In paragraph 3, the FHWA also proposes to add a new design standard for the R3–5 symbol sign. A proposed word message plaque LEFT LANE, CENTER LANE, etc. would be required below the R3–5 symbol sign so that the road user will know which lane applies to the sign.

30. In Section 2B–18, the FHWA proposes to expand the discussion on the Optional Movement Lane-Use Control (R3–6) sign and include the discussion in a new separate section. In paragraph 1, the FHWA proposes to specifically state that the Optional Movement Lane-Use Control (R3–6) sign shall be installed at the intersection location.

In paragraph 2, the FHWA proposes to specifically state that the Optional Movement Lane-Use Control (R3–6) sign shall indicate all permissible lane movements at the intersection.

31. In Section 2B.19, the FHWA proposes to classify the Double Turn Lane-Use Control (R3–8) sign as an Advance Intersection Lane-Use Control sign. The FHWA also proposes to provide placement guidance that indicates the R3–8 sign would be installed in advance of the tapers or at the beginning of the turn lane so that road users can determine in advance their appropriate vehicle placement for lane changes.

32. The FHWA proposes to add a new Section 2B.21, ''Reversible Lane Control Signs.'' The use of reversible lane traffic control is a practice which is commonly used throughout the United States and it is appropriate for the MUTCD to provide design, application, and placement information.

In paragraph 1, the FHWA proposes to add a discussion on the purpose and use of the Reversible Lane Control signs (R3–9c to R3–9i). A diagram of these new signs are shown in the proposed text for section 2B.20. The FHWA also proposes to include a statement that the reversible lane control signs may be either static or changeable message signs. The FHWA supports the use of changeable message signs especially in situations where real time motorist information is needed for changing traffic conditions.

33. In Section 2B.21, paragraph 2, although the Reversible Lane Control signs may be either ground or overhead mounted, the FHWA proposes to require that when ground mounted Reversible Lane Control signs are used, they shall be used as a supplement to overhead signs or signals. The ground mounted sign will provide the road user with additional information and an added opportunity to view the sign message and react accordingly.

34. In Section 2B.21, paragraph 3, the FHWA proposes to require the use of Reversible Lane Control signs at locations where it is determined by a traffic engineering study that lane use control signals or barriers are not necessary to operate a reversible lane.

35. There are times when jurisdictions responsible for traffic control may want to exercise the option of installing only pavement markings and reversible lane control signs rather than lane control signals to reverse traffic flow. In Section 2B.21, paragraph 4, the FHWA proposes 3 conditions that must be considered before a decision is made to reverse traffic flow with the use of only pavement markings and reversible lane control signs.

36. In Section 2B.21, paragraph 5, the FHWA proposes to refer the reader to a new Table 2B.2 which describes the meanings of symbols and legends used on reversible lane control signs. In paragraph 5 through 8, the FHWA proposes to provide a discussion for the appropriate design principles of reversible lane control signs.

37. In Section 2B.21, paragraphs 9 through 12, the FHWA proposes to provide a discussion for the appropriate placement principles for reversible lane control signs. The new signs R3–9g, R3–9h are proposed for advance reversible lane control application and the R3–9i sign is proposed for use at the termination of the reversible lane control.

38. In Section 2B.21, paragraph 13, the FHWA proposes to require that the Turn Prohibition signs be mounted overhead and separate from the Reversible Lane Control signs. In paragraph 14, the FHWA proposes to recommend that when the Turn Prohibition signs are used, a message stating the distance of the prohibition (example, NEXT 1 MILE) should be included on the sign.

39. In Section 2B.21, paragraph 17, the FHWA proposes to recommend that where left turning vehicles may impact the traffic safety and operational efficiency of reversible lanes, consideration should be given to prohibiting left and U-turns for a specified time period.

40. In Section 2B.26, the FHWA proposes to change the title from ''Signs for Uphill Traffic Lanes'' to ''Slow Moving Traffic Lane Signs.'' Since slow moving traffic is not only attributed to ''uphill'' roadway conditions, the FHWA proposes to delete the reference to uphill traffic and use the term ''slow moving traffic'' instead.

41. In Section 2B.26, paragraph 2, the FHWA proposes to recommend that the TRUCK LANE XX FEET sign (R4–6) should be installed in advance of the TRUCKS USE RIGHT LANE (R4–5) sign. In the 1988 edition of the MUTCD this is an optional condition which means that the sign may or may not be installed. The FHWA believes that changing this to a recommended condition will provide the road user with important advanced information that will aid in the driver's decisionmaking task.

42. In Section 2B.26, paragraph 3, the FHWA proposes to add a sentence to explain that the SLOWER TRAFFIC KEEP RIGHT sign (R4–3) may be used as a supplement or alternative to the TRUCKS USE RIGHT LANE sign (R4–5). This is particularly useful in situations where the slower traffic may not be just truck traffic.

43. In Section 2B.29, paragraph 1, the FHWA proposes to include a reference to direct readers to Figure 2–5a which shows the signing and pavement marking treatments for divided highway intersections with medians 9 m (30 ft.) or wider. The FHWA proposes to revise the figure shown in the 1988 MUTCD. The figure currently shown in the 1988 MUTCD shows two diagrams: one for divided highways with medians less than 9 m (30 ft.) and one for divided highways with medians 9 m (30 ft.) or wider. The proposed new figure for medians 9 m (30 ft.) or wider is expanded to show stop lines, wrong-way pavement markings, and pavement markings which show the vehicle turning path. This figure was one of the recommendations included in the ''Older Driver Highway Design

Handbook.'' [2] It is intended to reduce the potential for wrong-way movements for drivers turning left from the minor roadway. This proposed figure is shown in the proposed text for Chapter 2B for docket comment purposes. If adopted, it will replace the figure currently shown in Chapter 2A.

44. In Section 2B.30, paragraph 6, the FHWA proposes to clarify that the PEDESTRIAN PROHIBITED signs (R9–3a or R5–10c) should be installed so as to be clearly visible to pedestrians at a location where an alternative route or path is available. Pedestrian safety is a program emphasis area for the FHWA and we believe that this proposed change will help reduce the potential for pedestrians to walk in unsafe areas.

45. In Section 2B.31, paragraph 2, the FHWA proposes to change the recommendation regarding placement of the One Way signs (R6–1 and R6–2) to a requirement. The FHWA believes that requiring the placement of the One Way sign parallel to the one-way street at all alleys or roadway intersections to one way streets will: (1) Give motorists clearer directions, and (2) make traffic operations safer by reducing the chance of road users inadvertently making wrong-way movements.

46. In Section 2B.32, paragraph 3, the FHWA proposes to modify the text to allow the option of placing the Divided Highway Crossing signs (R6–3 and R6–3a) beneath the STOP or YIELD signs. In the 1988 MUTCD this option only applied to the STOP sign.

47. In Sections 2B.33, 2B.34, and 2B.35, the FHWA proposes to eliminate the distinction between urban and rural parking, stopping, and standing signs since the design and placement principles for both urban and rural conditions are substantially the same. The FHWA also proposes to separate the discussion on design and placement of these signs into individual sections (2B.34 and 2B.35).

48. In Section 2B.34, ''Design of Parking, Stopping, and Standing Signs,'' the FHWA proposes to require all street parking signs to be illuminated or retroreflective. This proposed change is consistent with Section 2A.8 which discusses the general provisions and standards for signs.

49. In Section 2B.35, paragraph 2, the FHWA proposes to include a sentence indicating that the spacing of parking signs should be based on legibility and sign orientation. The FHWA believes this is helpful placement guidance to follow when making sure that the parking signs are visible, particularly with regards to the surrounding traffic setting. This guidance would include such considerations as the roadway geometry and surrounding conditions—such as curves or shrubbery that may hinder sign visibility.

50. In the title for section 2B.36, the FHWA proposes to change the title from ''Emergency Parking Signs'' to ''Emergency Restriction Signs.'' This proposed change will allow the section to cover not just the EMERGENCY PARKING ONLY (R8–4) sign but other emergency restriction signs such as the EMERGENCY STOPPING (R8–7) and DO NOT STOP ON TRACKS (R8–8) signs.

51. In section 2B.36, paragraph 3, the FHWA proposes to allow the choice of using either the color red or black for the legend on emergency restriction signs R8–4, R8-7, and R8–8. Red is the color designated in section 1A of the Manual for restrictions and prohibition signs and black is the color designated for regulatory signs. The FHWA believes that either of these colors is appropriate. The background for these signs will remain white.

52. The 1988 MUTCD contains a sentence that the WALK ON LEFT (R9–1) and NO HITCH HIKING (R9–4) signs do not need to be retroreflective. The FHWA proposes to change the 1988 MUTCD by requiring that all signs, including pedestrian signs, shall be either retroreflective or illuminated to increase their visibility to road users. This proposed new requirement applies to all pedestrian signs and includes Section 2B.37, ''Walk on Left and No Hitch Hiking Signs,'' Section 2B.38, ''Pedestrian Crossing Signs,'' and Section 2B.39, ''Traffic Signal Signs, Auxiliary.''

53. In Section 2B.39, paragraphs 7 and 10, the FHWA proposes to add 2 new symbol signs for NO RIGHT TURN ON RED (R10–11c) and NO LEFT TURN ON RED (R10–11d). These new symbol signs would combine the standard NO RIGHT TURN (R3–1) and NO LEFT TURN (R3–2) symbols with the legend ''ON RED.''

54. In Section 2B.39, paragraph 12, the FHWA proposes to add 2 new signs for use with emergency beacon installations. These 2 proposed word message signs are: EMERGENCY SIGNAL (R10–13) and EMERGENCY SIGNAL/STOP WHEN FLASHING RED (R10–14).

55. The FHWA proposes to add a new section 2B.48 that will include provisions for the design and operation of high occupancy vehicle (HOV) lanes and a new section 2B.49 that will address the application and placement for HOV signs. Significant deployment has occurred with HOV lanes used on roadway facilities throughout the United States and the FHWA believes it is appropriate to address design, application and placement of signs and pavement markings for these special facilities. The language proposed for section 2B.48 would provide agencies that own and operate HOV lanes with an overall discussion on HOV signing principles. In addition to this proposed new section, the FHWA proposes the following MUTCD changes related to HOV lanes:

(a) The FHWA proposes to revise the R3–10 through R3–15 preferential lane signs (see proposed section 2B.22). These signs would be specifically designated for high occupancy vehicle (HOV) lanes which by definition include carpools, vanpools, and buses carrying at least two or more persons. The word message ''restricted lane'' shown on the R3–10, R3–12, R3–13, and R3–15 would be revised to identify the type of preferential vehicle traffic allowed in the lane (example: HOV lane, bus lane, or taxi lane.) When the preferential lane is for high occupancy vehicles, the word message ''HOV'' would be required along with the minimum allowable vehicle occupancy level (example: HOV 2+). The minimum allowable vehicle occupancy level would vary based on the level established for a particular facility by the State or local highway agency.

The diamond symbol is proposed for exclusive HOV use lanes. In situations where a preferential lane is not an HOV lane but is reserved for bus and/or taxi use, then the word message ''BUS (or TAXI)'' would replace the message on the R3–10 through R3–15 signs. The sign number for these proposed new signs would be R3–10a, R3–11a, etc. NOTE: In the proposed changes for MUTCD Part 9—Bicycles, the FHWA has proposed to delete the diamond symbol from the R3–16 and R3–17 ''Bicycle Lane'' signs since the diamond symbol has become synonymous with high occupancy vehicle lanes. The FHWA also proposes to add a new HOV supplemental plaque (R3–5c) to the text in proposed section 2B.17, ''Mandatory Movement Lane Control Signs.'' This plaque would be used with the R3–5 ground mounted sign on HOV facilities to indicate the appropriate mandatory lane movement.

(b) The FHWA proposes to add the following definitions in Part 1:

High Occupancy Vehicle (HOV)—a motor vehicle carrying at least two or more persons, including carpools, vanpools, and buses. The agencies that

[2] ''Older Driver Highway Design Handbook,'' Report No. FHWA–RD–99–045, available from the FHWA Research and Technology Report Center, 9701 Philadelphia Court,Unit Q, Lanham, Maryland 20706.

own and operate HOV lanes have the authority and responsibility to determine the occupancy requirements for vehicles operating in HOV lanes, except that no fewer than 2 occupants per vehicle may be required.

HOV lane—any preferential lane designated for exclusive use by HOVs for all or part of a day—including a designated lane on a freeway, other highway, street, or independent roadway on a separate right-of-way.

Occupancy requirement—any restriction that regulates the use of a facility for any period of the day based on a specified number of persons in a vehicle.

Occupants—the number of people in a car, truck, bus, or other vehicle.

Concurrent flow HOV lane—an HOV lane that is operated in the same direction as the adjacent mixed flow lanes, separated from the adjacent general purpose freeway lanes by a standard lane stripe, painted buffer, or barrier.

Contraflow lane—a lane operating in a direction opposite to the normal flow of traffic designated for peak direction of travel during at least a portion of the day. Contraflow lanes are usually separated from the off-peak direction lanes by plastic pylons, moveable or permanent barrier.

(c) The FHWA proposes to also include provisions for HOV signs and markings to MUTCD Chapter 2E—Guide Signs—Freeways and Expressways and MUTCD Part 3—Markings.

Discussion of Proposed New Part 5—Traffic Control Devices for Low Volume Rural Roads

1. The FHWA proposes adding a new Part 5, ''Traffic Control Devices For Low Volume Rural Roads.'' The current Part 5 (Islands) is proposed to be incorporated into Part 3 as discussed in the notice of proposed amendment dated January 6, 1997, at 62 FR 691. The intent is to have a part of the MUTCD dedicated to those low volume facilities that constitute a high percentage of the total road miles in the United States. The goal of Part 5 is to provide standards and guidance for traffic control devices that are unique to or most applicable to low volume roadways. Part 5 is currently designed to reference other applicable sections of the MUTCD relative to standards and guidance for traffic control devices that are appropriate for low volume roads but are also applicable to higher class facilities. An alternative format could be to eliminate a separate Part 5 and place the small amount of information that is applicable only to low volume rural roads in other appropriate sections of the MUTCD.

2. In Section 5A.1, the FHWA proposes to define low volume roads as those facilities that lie outside the corporate limits of communities and have a traffic volume of less than 200 AADT (average annual daily traffic).

3. In Section 5A.1, the FHWA proposes to provide three categories of low volume rural roads for use throughout Part 5:

Category 1—Unimproved roadways
Category 2—Graded drained earth or gravel roadways
Category 3—Paved roadways

4. The FHWA is proposing to add to Part 5 typical figures for those signs that may have metric message. These include SPEED LIMIT sign (R2–1), NIGHT Speed sign (R2–3), LOCAL TRAFFIC ONLY (R11–3), WEIGHT LIMIT sign (R12–1), Advisory Speed Plaque (W13–1), NEXT XX M (FT) sign (W7–3a), ROAD WORK XX M (FT) sign (W20–1), and Supplemental Plate (W16–1).

5. In Section 5.A.2, the FHWA proposes options for the deployment of traffic control devices on low volume rural roads that vary from what is, typically, appropriate for higher class facilities.

6. In Section 5A.4, paragraph 2, the FHWA proposes, for low volume roads, an option to allow a 0.6 m (2 ft) offset from the edge of a shoulder, or roadway without shoulders, to the near edge of a sign. This varies from the recommended offset of 1.8 m (6 ft) from the edge of the shoulder or 3.6 m (12 ft) from the edge of the traveled way, where no shoulder exists, as published in Section 2A.24 of the 1988 MUTCD; or 1.8 m (6 ft) from the shoulder or traveled way as proposed in Section 2A.19 published in the notice of proposed amendment dated June 11, 1998, at 63 FR 31950. The proposed option would be allowed on low volume roads if roadside features such as terrain, shrubbery, and/or trees prevent lateral placement in accordance with Section 2A.19.

7. In Section 5B.2, the FHWA proposes adding supplemental criteria for use with the warrant criteria in Sections 2B.4 through 2B.8 of the 1988 MUTCD to guide the installation of Stop and Yield signs on low volume rural roads.

8. In Section 5C.11, the FHWA proposes adding a new NO TRAFFIC SIGNS warning sign for optional use on Category 1 roads (unimproved roadways with less than 200 AADT) as proposed by the National Committee on Uniform Traffic Control Devices. The FHWA is aware that some low volume rural roads have no signs and that NO TRAFFIC SIGNS warning signs could alert road users for safety purposes.

9. In Section 5E.2, the FHWA proposes adding additional criteria for considering centerline installation on Category 3 roads (paved roads with less than 200 AADT) that supplement the criteria proposed in Chapter 3B published in the notice of proposed amendment dated January 6, 1997.

Discussion of Proposed Amendments to Part 8—Traffic Control for Highway-Rail Grade Crossings (Update)

The summary of proposed changes for Part 8 was published as Phase 1 of the MUTCD rewrite effort in a previous notice of proposed amendment dated January 6, 1997, at 62 FR 691. Since that time, a number of tragic highway-rail grade crossing crashes have occurred. Following the Fox River Grove, Illinois school bus crash, the United States Department of Transportation (USDOT) decided to build upon its 1994 Highway-Rail Crossing Safety Action Plan by forming an internal USDOT Task Force to review the decisionmaking process for designing, constructing, and operating rail crossings and provide recommendations. The following proposed changes are based on the Highway-Rail Crossing Safety Action Plan, the USDOT Task Force Implementation Report dated June 1, 1997, and the National Transportation Safety Board recommendations. These proposed changes are intended as updates to the previously published notice of proposed amendment (NPA) dated January 6, 1997:

1. Based on the notice of proposed amendments published December 5, 1997 at 62 FR 64324, the title of Part 8 would be changed from ''Traffic Control for Roadway-Rail Intersections'' to ''Traffic Control for Highway-Rail Grade Crossings.'' This new terminology is incorporated in the language in this notice of proposed amendments.

2. The FHWA proposes to update Section 8A.1, paragraph 5, to include 16 terms specific to highway-rail grade crossing traffic control devices. The definitions for these following terms are included in the proposed text: (1) Minimum Track Clearance Distance; (2) Clear Storage Distance; (3) Preemption; (4) Interconnection; (5) Monitored Interconnected Operation; (6) Minimum Warning Time—Through Train Movements; (7) Right-of-Way Transfer Time; (8) Queue Clearance Time; (9) Separation Time; (10) Maximum Preemption Time; (11) Advance Preemption and Advance Preemption

Time; (12) Simultaneous Preemption; (13) Pre-Signal; (14) Cantilevered Signal Structure; (15) Design Vehicle; and (16) Dynamic Envelope.

3. The FHWA proposes to update Section 8A.2, paragraph 6 to clarify the fact that all highway-rail grade crossings shall comply with the MUTCD as stated in 23 CFR 655.603(b). The FHWA also proposes to also add a new discussion in paragraphs 2 and 3 to allow the option of using the national highway-rail intersection (HRI) architecture as a method for conducting an engineering study to determine the method for linking the highway, vehicles, and traffic management systems with rail operations and wayside equipment.[3]

4. The FHWA proposes to update Section 8A.4, paragraph 5, by changing the following sentence from a recommendation (GUIDANCE) to a mandatory (STANDARD) condition: ''If the existing traffic control devices at a multiple-track crossing become improperly placed or inaccurate because of the removal of the tracks, the existing devices shall be relocated and/or modified.''

5. The FHWA proposes to update the last paragraph of Section 8A.5 by changing the following sentence from a recommendation (GUIDANCE) to a mandatory (STANDARD) condition: ''If a highway-rail grade crossing exists either within or in the vicinity or roadway work activities, then lane restrictions, flagging, or other operations shall not be performed in a manner that would cause vehicles to stop on the railroad tracks with no means to escape.''

6. The FHWA proposes to add a new Section 8A.6 to describe the dynamic envelope clearance concept and provide standards and guidance for delineating this clearance required for the train and its cargo overhang.

7. The FHWA proposes to add a new Section 8A.7 to discuss the application of Storage Space Signs (W10–11 and 11a) which are intended to warn road users of locations where vehicle storage space is limited between the railroad tracks and the adjacent highway intersection.

8. The FHWA proposes to add a new Section 8A.8 to define private highway-rail grade crossings and to discuss issues related to these private crossings.

9. The FHWA proposes to update Section 8B.2, paragraph 3. If crossbuck signs are installed back-to-back, any retroreflective material used on the back of one crossbuck blade would be blocked by the second mounted crossbuck sign. Therefore, the FHWA proposes to modify the language in this section accordingly.

10. The FHWA proposes to update Section 8B.2, paragraph 4, to require retroreflective material to be used on supports at all highway-rail grade crossings, not just passive highway-rail grade crossings. This proposed change would improve visibility of the grade crossing supports.

11. The FHWA proposes to update Section 8B.3 by adding a new paragraph 6 under GUIDANCE to read, ''Where the distance between the railroad and the parallel highway from edge of track to edge of highway is less than 30 m (100 feet), it is not necessary to install a W10–1 sign if the W10–2, W10–3, or W10–4 signs are used on the parallel highway.'' The purpose of this proposed change is to reduce the sign clutter on highways where there is less than 30 m (100 feet) between the highway-rail grade crossing and a highway intersection.

12. The FHWA proposes to update Section 8B.7, paragraph 1, by adding a new phrase to the end of this paragraph that would read, ''* * * in accordance with Chapter 2C.'' The FHWA believes that this addition would help ensure that STOP AHEAD (W3–1a) or YIELD AHEAD (W3–2a) advance warning signs are used.

13. The FHWA proposes to add a new Section 8B.9 to discuss the application and placement of highway-rail crossing identification signs and 1–800 numbers to provide a means for emergency notification. The former Section 8B.9 published in the January 6, 1997, notice would become Section 8B.14, ''Pavement Markings.''

14. The FHWA proposes to add a new Section 8B.10 to provide a sign for use on class 5 or higher railroad tracks where trains may exceed 130 km (80 mph). The former Section 8B.10 published in the January 6, 1997, notice would become Section 8B.15, ''Stop Lines.''

15. The FHWA proposes to add a new Section 8B.11 to provide a sign for use at highway-rail grade crossings which have the Federal Railroad Administration's authorization for trains not to sound horns. The former Section 8B.11 published in the January 6, 1997, notice would become Section 8B.16, ''Low Ground Clearance Crossings.''

16. The FHWA proposes to add a new Section 8B.12 to provide a sign to warn road users that a particular highway-rail grade crossing is not equipped with automated signals.

17. The FHWA proposes to add a new Section 8B.13 to provide a sign for use at highway-rail grade crossings without active warning devices. This regulatory sign would direct road users to look for approaching trains.

18. The FHWA proposes to update Section 8C.1, paragraph 2 to indicate that luminares shall be located so that they do not impose unnecessary glare on approaching road users.

19. The FHWA proposes to update Section 8D.2 to move paragraph 10 from a recommendation (GUIDANCE) to a mandatory (STANDARD) condition. The paragraph will read: ''Flashing-light signals shall be placed to the right of approaching highway traffic on all highway approaches to a crossing. They shall be located laterally with respect to the highway in conformance with Figure 8–5. This shall not apply where such location would adversely affect signal visibility.'' The FHWA proposes this change because we believe flashing-light signals shall always be placed on the right side of the road where people expect to receive roadway information.

20. The FHWA proposes to revise Section 8D.2 to delete the last sentence of paragraph 6. The reason for this proposed change is to avoid limiting the type of technology used to charge the batteries for highway-rail grade crossing warning systems.

21. In Section 8D.4, the FHWA proposes to include a discussion to require that the approach lane gate arms be designed to fail safe in the down position. This is consistent with the discussion already covered in Section 8D.5 for exit lane gate arms.

22. The FHWA proposes to add a new Section 8D.5 to provide standards and guidance for Four Quadrant Gate Systems. Four Quadrant Gate Systems consists of a series of automatic gates used as an adjunct to flashing lights to control traffic on all lanes at the highway-rail grade crossing.

23. The FHWA proposes to update Section 8D. 6 of the previously published January 6, 1997, notice (see section 8D.7 in this proposed update for Part 8.) The FHWA proposes to change paragraph 2 to indicate that traffic control signals shall not be used on roadways at highway-rail grade crossings in lieu of gates and/or flashing lights where train speeds are greater than 32 km/h (20 mph). The FHWA also proposes to add the following 2 new paragraphs: (1) At the end of the GUIDANCE for this section the FHWA proposes to recommend that a NO TURN ON RED sign should be used where a pre-signal is installed at an interconnected highway-rail grade crossing near a signalized intersection with a storage problem; and (2) The FHWA proposes a new OPTION which would allow the highway traffic signals

[3] Available from Federal Railroad Administration, 4007th Street, SW., Washington, DC 20590.

to be mounted on the same cantilevered device as the railroad flashing lights in situations where the highway-rail grade crossing and the highway intersection are in close proximity and when determined feasible by an engineering study.

Rulemaking Analysis and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

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

The FHWA has determined preliminarily that this action will not be a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. The new standards and other changes proposed in this notice are intended to improve traffic operations and safety, and provide additional guidance, clarification, and optional applications for traffic control devices. The FHWA expects that these proposed changes will create uniformity and enhance safety and mobility at little additional expense to public agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed action on small entities. This notice of proposed rulemaking adds some new and alternative traffic control devices and traffic control device applications. The proposed new standards and other changes are intended to improve traffic operations and safety, expand guidance, and clarify application of traffic control devices. The FHWA hereby certifies that these proposed revisions would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose a Federal mandate resulting 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 (2 U.S.C. 1532).

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, which requires that changes to the national standards issued by the FHWA shall be adopted by the States or other Federal agencies within two years of issuance. The proposed amendment is in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of the highway. To the extent that this amendment would override any existing State requirements regarding traffic control devices, it does so in the interests of national uniformity.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

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

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

Authority: 23 U.S.C. 109(d), 114(a), 315, and 402(a); 23 CFR 1.32; 49 CFR 1.48.

Issued on: December 13, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 99–32907 Filed 12–20–99; 8:45 am]

BILLING CODE 4910–22–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 2

[FRL–6513–1]

Elimination of Special Treatment for Category of Confidential Business Information: Extension of the Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On October 25, 1999, the Environmental Protection Agency (EPA) published a notice in the **Federal Register** (64 FR 57421) proposing to amend its regulations to eliminate the special treatment given to a category of confidential business information (CBI). This category of information includes comments received from businesses to substantiate their claims of confidentiality for previously submitted information (a ''substantiation''). Under EPA's current regulations (40 CFR 2.205 (c)), if a substantiation is properly marked as confidential when received by EPA (in accordance with 40 CFR 2.203(b)) and not otherwise possessed by EPA, the substantiation ''will be regarded as entitled to confidential treatment and will not be disclosed by EPA without the [submitter's] consent, unless its disclosure is duly ordered by a Federal court, notwithstanding other provisions of this subpart to the contrary.'' EPA proposes to amend its regulations to remove this provision, so that substantiations will be treated in exactly the same way as other information requested under FOIA and claimed as confidential. EPA believes that the special treatment of substantiations under 40 CFR 2.205 (c) is not necessary to encourage businesses to submit sufficient information to support their confidentiality claims and that its CBI determination procedures (40 CFR part 2, subpart B) provide adequate safeguards to prevent the improper release of additional CBI contained in a submitter's substantiation. In addition, the removal of this provision will bring EPA into conformity with other Federal agencies which do not provide special treatment for substantiations.

As detailed in 64 FR 57421, EPA originally sought comments on the proposed rule by December 27, 1999. In response to requests from interested parties for additional time to analyze and comment on the proposed rule, EPA hereby extends the comment period for 30 days to January 26, 2000.

DATES: Comments on the proposed rule must be submitted by January 26, 2000.

ADDRESSES: Written comments on this proposed rule should be addressed to Rebecca Moser, Environmental Protection Agency, Office of Environmental Information (Mail Code 2822), 401 M Street, SW, Washington, DC 20460. Documents related to this proposed rule will be available for public inspection and viewing by appointment.

FOR FURTHER INFORMATION CONTACT: Rebecca Moser, (202) 260–6780.

Dated: December 13, 1999.

Margaret N. Schneider,

Acting Assistant Administrator, Office of Environmental Information.

[FR Doc. 99–33029 Filed 12–20–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[WH–FRL–6513–5]

RIN 2040–AA94

National Primary Drinking Water Regulations; Radon-222

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed radon in drinking water rule; notice of extension of public comment period.

SUMMARY: Today, the Environmental Protection Agency (EPA) is providing notice to extend the public comment period for the proposed rule that would provide a multimedia approach to reducing radon risks in indoor air (where the problem is greatest), while protecting public health from the highest levels of radon in drinking water (40 CFR Parts 141 and 142). The proposed rule for radon in drinking water was published in the **Federal Register** on November 2, 1999 (64 FR 59246).

DATES: EPA must receive public comments, in writing, on the proposed regulations by February 4, 2000. Comments provided electronically will be considered timely if they are submitted electronically by 11:59 p.m. (Eastern time) February 4, 2000.

ADDRESSES: You may send written comments to the Radon-222, W–99–08 Comments Clerk, Water Docket (MC–4101); U.S. Environmental Protection Agency; 401 M Street, SW., Washington, DC 20460. Comments may be hand-delivered to the Water Docket, U.S. Environmental Protection Agency; 401 M Street, SW., East Tower Basement, Washington, DC 20460. Comments may be submitted electronically to *ow-docket@epamail.epa.gov.* Electronic comments must be submitted as an ASCII, WP6.1, or WP8 file avoiding the use of special characters and any form of encryption. Electronic comments must be identified by the docket number W–99–08. Comments and data will also be accepted on disks in WP6.1, WP8, or ASCII format. Electronic comments on this action may be filed online at many Federal Depository libraries.

Please submit a copy of any references cited in your comments. Facsimiles (faxes) cannot be accepted. EPA would appreciate one original and three copies of your comments and enclosures (including any references). Commenters who would like EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope.

The proposed rule and supporting documents, including public comments, are available for review in the Water Docket at the address listed previously. The Docket also has several of the key supporting documents electronically available as PDF files. For information on how to access Docket materials, please call (202) 260–3027 between 9 a.m. and 3:30 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For general information on radon in drinking water, contact the Safe Drinking Water Hotline, phone (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Time. For technical inquiries regarding the proposed regulations, contact Sylvia Malm, Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency (mailcode 4607), 401 M Street, SW, Washington DC, 20460. Phone: (202) 260–0417. E-mail: *malm.sylvia@epa.gov.* For inquiries regarding the proposed multimedia mitigation program, contact Anita Schmidt, Office of Radiation and Indoor Air, U.S. Environmental Protection Agency, (mailcode 6609J), 401 M Street, SW, Washington, DC, 20460. Phone: (202) 564-9452. E-mail: *schmidt.anita@epa.gov.* For general information on radon in indoor air, contact the Radon Hotline at 1–800–SOS–RADON (1–800–767–7236).

SUPPLEMENTARY INFORMATION: On November 2, 1999, EPA published the proposed regulation for radon in drinking water, 40 CFR Parts 141 and 142 (64 FR 59246). The November 2 notice provided a deadline of 60 days from the date of publication for receipt of public comments. Since the publication date, EPA has received requests to extend the comment period to allow sufficient time for all parties potentially impacted by this proposal to consider and provide comprehensive comments. In response to these requests, EPA has decided to extend the public comment period by an additional 30 days to February 4, 2000.

The Agency is proposing a Maximum Contaminant Level Goal (MCLG) and National Primary Drinking Water Regulations (NPDWR) for radon-222 in public water supplies. Under the framework set forth in the 1996 amendments to the SDWA, EPA is also proposing an alternative maximum contaminant level (AMCL) and requirements for multimedia mitigation (MMM) programs to address radon in indoor air. Public water systems (PWS) are defined in the Safe Drinking Water Act (SDWA). This proposed rule applies to community water systems (CWS), a subset of PWSs. Under the proposed rule, CWSs may comply with the AMCL if they are in States that develop an EPA-approved MMM program or, in the absence of a State program, develop a State-approved CWS MMM program. This approach is intended to encourage States, Tribes, and CWSs to reduce the health risk of radon in the most cost-effective way. The Agency is also proposing a maximum contaminant level (MCL) for radon-222, to apply to CWSs in non-MMM States that choose not to implement a CWS MMM program. The proposal also includes monitoring, reporting, public notification, and consumer confidence report requirements for radon-222 in drinking water.

Dated: December 15, 1999.

Dana D. Minerva,

Acting Assistant Administrator.

[FR Doc. 99–33031 Filed 12–20–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 165

[OPP–190001B; FRL–6396–7]

RIN 2070–AB95

Standards for Pesticide Containers and Containment; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: On October 21, 1999 (64 FR 56918), EPA reopened the comment period on the proposed rule ''Standards for Pesticide Containers and Containment''(59 FR 6712, February 11, 1994) to obtain comment on four specific issues. EPA is extending the comment period by 60 days until February 19, 2000. The comment period was initially scheduled to close on December 20, 1999. The October 21, 1999 notice solicited comments on potential changes that would reduce the scope of the container standards, add an exemption for certain antimicrobial pesticides, and adopt some of the Department of Transportation (DOT) hazardous materials regulations. That notice also requested comments on the definition for small business used to identify small pesticide formulators, agrichemical dealers and commercial pesticide applicators in the small entity impact analysis. These potential changes, if adopted in the final rule, would support EPA's goal of pollution prevention by promoting the use of refillable containers and would harmonize and promote consistency within the Federal packaging standards by adopting the DOT standards. In addition, the changes would decrease the estimated economic impact by reducing the number of pesticide products subject to the container requirements compared to the original proposal.

DATES: Comments, identified by the docket control number OPP–190001B, must be received on or before February 19, 2000.

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–190001B in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Nancy Fitz, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–7385; fax number: (703) 308–3259; e-mail address: fitz.nancy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a pesticide formulator, agrichemical dealer, or an independent commercial applicator. However, the issues addressed in this action apply mainly to pesticide formulators. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	SIC	Examples of Potentially Affected Entities
Pesticide formulators	32532	2879	Establishments that formulate and prepare insecticides, fungicides, herbicides, or other pesticides from technical chemicals or concentrates produced by pesticide manufacturing establishments. Some formulating establishments are owned by the large basic pesticide producers and others are independent.
Agrichemical dealers	44422	5191	Retail dealers that distribute or sell pesticides to agricultural users.
Independent commercial applicators	115112	0721	Businesses that apply pesticides for compensation (by aerial and/or ground application) and that are not affiliated with agrichemical dealers.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed above could also be affected. The Standard Industrial Classification (SIC) codes and 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. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in Unit VII of the proposed rule published in the **Federal Register** of October 21, 1999 (64 FR 56918) and in §§ 165.100, 165.120, 165.122, 165.140, 165.141, and 165.142 of the original proposed rule (59 FR 6712, February 11, 1994). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

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 various 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/fedrgstr/.

2. *In person.* The EPA has established an official record for this action under docket control number OPP–190001B. 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. A public version of this record, including printed, paper versions of any electronic comments submitted during the comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is 703–305–5805.

C. How and to Whom do I Submit Comments?

As described in Unit I. of the proposed rule published in the **Federal Register** of October 21, 1999 (64 FR 56918) (FRL–5776–3), you may submit your comments through the mail, in person, or electronically. Please follow the instructions that are provided in the proposed rule. Do not submit any information electronically that you consider to be CBI. To ensure proper receipt by EPA, be sure to identify docket control number OPP–190001B in the subject line on the first page of your response.

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 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. A copy of the comment that does not contain 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 by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the person identified in the ''FOR FURTHER INFORMATION CONTACT'' section.

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the various options we discuss in this document, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

• Explain your views as clearly as possible.

• Describe any assumptions that you use.

• Provide solid technical information and/or data to support your views.

• If you estimate potential burden or costs, explain how you arrive at the estimate.

• Tell us what you support, as well as what you disagree with.

• Provide specific examples to illustrate your concerns.

• Offer alternative ways to improve the rule.

• Make sure to submit your comments by the deadline in this notice.

• 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 EPA Taking?

EPA is extending the comment period for 60 days in response to a request for an extension. On October 21, 1999 (64 FR 56918) (FRL–5776–3), EPA reopened the comment period on the rule ''Standards for Pesticide Containers and Containment'' to obtain comment on four specific issues. The October 21, 1999 **Federal Register** notice solicited comments on four aspects of the original 1994 proposed rule that proposed container design and residue removal requirements for refillable and nonrefillable pesticide containers and standards for pesticide containment structures. (59 FR 6712, February 11, 1994) (FRL–4168–9). Because of the lengthy time period between the original proposal in 1994 and the recent notice to reopen the comment period, EPA believes that granting the extension is warranted.

B. What is the Agency's Authority for Taking this Action?

EPA proposed the standards for pesticide containers and containment based on the authority in section 19 of the Federal Insecticide, Fungicide, and Rodenticide Act.

III. Do Any Regulatory Assessment Requirements Apply to this Action?

No. This action is not a rulemaking, it merely extends the date by which public comments must be submitted to EPA on a proposed rule that previously published in the **Federal Register** of October 21, 1999 (64 FR 56918). For information about the applicability of the regulatory assessment requirements to that proposed rule, which published in the **Federal Register**, please refer to the discussion in Unit X of that document.

List of Subjects in 40 CFR Part 165

Environmental protection, Antimicrobial pesticides, Packaging and containers, Pesticides and pests.

Dated: December 10, 1999.

Susan H. Wayland,

Deputy Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–33034 Filed 12–20–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0, 80, and 90

[WT Docket No. 99–332; FCC 99–348]

Making the Frequency 156.250 MHz Available for Port Operations Purposes in Los Angeles and Long Beach, CA Ports

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Commission's rules to designate marine VHF Channel 05A for

port operations communications in Los Angeles and Long Beach, California ports. The effect of this rule is that it will foster reliable marine communications and increase safe vessel transit in the ports. The action will allow the LA/LB Pilots to manage vessel traffic in that area more efficiently and protect the marine environment by preventing collisions and groundings.

DATES: Comments must be submitted on or before January 18, 2000 and reply comments are due on or before February 1, 2000.

FOR FURTHER INFORMATION CONTACT: James Shaffer of the Commission's Wireless Telecommunications Bureau at (202) 418–0680.

SUPPLEMENTARY INFORMATION:

1. This is a summary of the Commission's *Notice of Proposed Rule Making* FCC 99–348, adopted on November 15, 1999, and released on November 19, 1999. The full text of this *Notice of Proposed Rule Making* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY A257, 445 12th Street, SW, Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

2. By letter the Los Angeles and Long Beach Port Pilots (jointly, LA/LB Pilots) request the assignment of an intership marine VHF channel dedicated to port operations (namely, pilot-tug communications) in the Ports of Los Angeles and Long Beach, California. They note that marine VHF Channels 01A (156.050 MHz), 05A (156.250 MHz), and 63A (156.175 MHz) are currently used for U.S. Coast Guard (Coast Guard) designated Vessel Traffic Service (VTS) systems in defined areas of the United States. The LA/LB Pilots recommend that one of these frequencies be designated for intership communications regarding port operations to improve vessel traffic safety in the Los Angeles and Long Beach port area. In this *Notice of Proposed Rule Making,* we propose to amend part 80 of the Commission's rules to designate marine VHF Channel 05A for port operations communications in Los Angeles and Long Beach, California ports. We believe that this action will foster reliable marine communications and increase safe vessel transit in the ports.

3. The LA/LB Pilots state that the ports of Los Angeles and Long Beach are among the busiest in the world, with considerable vessel congestion. In this type of environment, harbor pilots rely upon clear and effective radio communications with tugs to help ensure the safe ingress and egress of large vessels. The LA/LB Pilots note that there is only one frequency, marine VHF Channel 77 (156.875 MHz), dedicated to intership communications related to port operations. The Commission's rules provide that Channel 77 ''is limited to communications with pilots regarding the movement and docking of ships,'' and that ''[n]ormal output power must not exceed 1 watt.'' The LA/LB Pilots state that marine VHF Channel 77 is frequently congested. They further contend that while output power is limited to one watt, communications often carry over from one port to the other and there is interference when more than one ship is maneuvering in or out of port.

4. The LA/LB Pilots note that marine VHF Channels 01A (156.050 MHz), 05A (156.250 MHz), and 63A (156.175 MHz) are used for communications related to port operations in certain Coast Guard-designated VTS areas. Specifically, the frequencies 156.050 MHz and 156.175 MHz are currently allocated in the United States to the Public Safety Pool in the private land mobile radio services; however, they were made available to maritime radio users for commercial and port operation purposes in a portion of the Coast Guard-designated New Orleans VTS system. The frequency 156.250 MHz, which is currently allocated to maritime mobile radio, was made available for port operations purposes within the Coast Guard-designated Houston and New Orleans VTS systems, and Seattle VTS system. The LA/LB Pilots state that their monitoring of these channels detected no users in the area of the Ports of Los Angeles and Long Beach.

5. In addition, the Los Angeles/Long Beach Harbor Safety Committee (LA/LB Safety Committee) note that the Coast Guard and Marine Exchange of Los Angeles-Long Beach Harbor, Inc., acting for the State of California, currently have a Memorandum of Agreement in which the Coast Guard agrees to provide personnel support for the operation of an interim Vessel Traffic Information Service (VTIS). The VTIS system is an advisory communications service to coordinate vessel movement and prevent damage to or loss of vessels, bridges or other structures, and to protect these waters and associated natural resources from environmental harm resulting from such damage or loss. Vessels report, by voice, information related to position, navigation and conditions affecting navigation to the Coast Guard, which tracks the vessels' movements. The LA/LB Safety Committee also recommend the use of either marine VHF Channels 01A, 05A, or 63A for intership communications related to port operations in the Los Angeles and Long Beach ports.

6. The LA/LB Pilots also note that authorities responsible for port safety, including the Coast Guard, the California Office of Oil Spill Response and Prevention, and the LA/LB Harbor Safety Committee, fully support the request. The Southern California Marine Radio Council (SCMRC), which is the FCC-designated marine VHF frequency coordinating committee for this region, also supports this request.

7. As an initial step to provide some relief for frequency congestion in communications related to port operations in the Los Angeles and Long Beach port areas the feasibility of using frequency 156.250 MHz for intership communications was investigated in conjunction with the Coast Guard and industry. This frequency had not been previously assigned, other than in Coast Guard-designated Houston, New Orleans, and Seattle VTS systems because of its band edge location and the resultant potential harmful interference with land mobile radio assignments on the adjacent public safety frequency 156.240 MHz. However, after reviewing assignments in the Los Angeles and Long Beach area it appears that 156.250 MHz could be utilized without harmful interference to existing radio operations as it is not assigned for public safety purposes. Therefore, we believe it is in the public interest to provide in the Rules for the use of frequency 156.250 MHz (marine VHF Channel 05A) in the Los Angeles and Long Beach port areas to alleviate the communications congestion related to port operations. Thus, we propose to amend § 80.373 of the Commission's rules to so provide. Further, we propose to make assignments on Public Safety Pool frequencies of 156.240 and 156.2475 MHz within 100 miles of the geographic center of Los Angeles, defined as 34° 03′ 15″ north latitude and 118° 14′ 28″ west longitude, secondary to marine port operations on 156.250 MHz. We propose to amend § 90.20 of the Commission's rules to indicate the aforementioned secondary status. We seek comment on these proposals.

8. Accordingly, effective upon the adoption date of this *Notice of Proposed Rule Making*, no applications for public safety pool frequencies of 156.240 and

156.2475 MHz within 100 miles of the geographic center of Los Angeles will be accepted for filing during the pendency of the *Notice of Proposed Rule Making*. Any applications received on or after this date will be returned as unacceptable for filing.

9. We note that currently there are no private coast stations authorized to operate on marine VHF Channel 05A within the Los Angeles and Long Beach area. We propose not to authorize future private coast stations on this channel if we ultimately designate marine VHF Channel 05A for port operations. The Marine Exchange of Los Angeles-Long Beach Harbor, Inc., which operates the VTIS for the ports of Los Angeles and Long Beach, describes its area of responsibility as within a 25-nautical mile radius of Point Fermin. We propose to designate this area as the radio protection area for port operations on 156.250 MHz. We do not believe that such an approach would adversely affect private coast operations. In this connection, Wireless Telecommunications Bureau staff would assist future applicants in finding suitable alternative channels to Channel 05A. We seek comment on this proposal.

10. Finally, we propose to amend § 0.331 of the Commission's rules to authorize the Chief, Wireless Telecommunications Bureau to amend the maritime service rules at the request of the United States Coast Guard to indicate that the use of marine VHF frequencies in defined port areas are available for intership communications related to port operations to alleviate the communications congestion related to port operations. We believe that this approach will allow the Commission to expedite these requests, which will increase safe vessel transit and protect U.S. waters and associated natural resources from environmental harm. We seek comment on this proposal.

11. We conclude that permitting frequency 156.250 MHz (marine VHF Channel 05A) for intership communications related to port operations in the Los Angeles and Long Beach, California ports will allow the LA/LB Pilots to manage vessel traffic in that area more efficiently and protect the marine environment by preventing vessel collisions and groundings. We are proposing, therefore, to amend § 80.373(f) of the Commission's rules to indicate that frequency 156.250 MHz (marine VHF Channel 05A) is available only for intership communications related to port operations within the Los Angeles and Long Beach harbor areas. The radio protection area will be defined as ''within a 25-nautical mile radius of Point Fermin, California.'' Additionally, we are proposing to amend § 90.20(c) of the Commission's rules to indicate that assignments on public safety pool frequencies of 156.240 and 156.2475 MHz within 100 miles of the geographic center of Los Angeles are secondary to marine port operations on 156.250 MHz.

Procedural Matters

12. *Ex Parte Presentations.* This *Notice of Proposed Rule Making* is a permit-but-disclose notice and comment rule making proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in Commission Rules.

13. *Pleading Dates.* Pursuant to Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before January 18, 2000, and reply comments on or before February 1, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

14. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

15. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW–B204, Washington, DC 20554.

16. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, 445 12th Street, SW, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number in this case, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20037.

Initial Regulatory Flexibility Act Analyses

17. As required by the Regulatory Flexibility Act,[1] the Commission has prepared an Initial Regulatory Flexibility Analysis of the possible impact on small entities of the proposals suggested in the *Notice of Proposed Rule Making*. *See* Appendix A. Written public comments are requested on the Initial Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this Notice but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Office of Public Affairs, Reference Operations Division, will send a copy of this *Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses

18. Authority for issuance of this *Notice of Proposed Rule Making* is contained in Sections 4(i), 4(j), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 403.

19. NOTICE IS HEREBY GIVEN and COMMENT IS SOUGHT on the proposed regulatory changes described

[1] *See* 5 U.S.C. 603.

in the *Notice of Proposed Rule Making*, as set forth in Proposed rules.

20. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this *Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

21. IT IS FURTHER ORDERED that effective upon the release date of this *Notice of Proposed Rule Making*, no applications will be accepted for filing for the public safety frequencies of 156.240 and 156.2475 MHz within 100 miles of the geographic center of Los Angeles, defined as 34° 03′ 15″ north latitude and 118° 14′ 28″ west longitude. This freeze will continue until the Commission makes an announcement that such applications acceptance will resume.

Initial Regulatory Flexibility Analysis

As required by section 603 of the Regulatory Flexibility Act,[2] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in the *Amendment of parts 0, 80, and 90 of the Commission's rules to Make the Frequency 156.250 MHz Available for Port Operations Purposes in Los Angeles and Long Beach, CA Ports.* Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Amendment of parts 0, 80, and 90 of the Commission's rules to Make the Frequency 156.250 MHz Available for Port Operations Purposes in Los Angeles and Long Beach, CA Ports*, provided in paragraph 11 of the item. The Commission will send a copy of the *Amendment of parts 0, 80, and 90 of the Commission's rules to Make the Frequency 156.250 MHz Available for Port Operations Purposes in Los Angeles and Long Beach, CA Ports*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the *Amendment of parts 0, 80, and 90 of the Commission's rules to Make the Frequency 156.250 MHz Available for Port Operations Purposes in Los Angeles and Long Beach, CA Ports* and IRFA (or summaries thereof) will be published in the **Federal Register**. *See id.*

[2] 5 U.S.C. 603.

I. Need for and Objectives of the Proposed Rule

The purpose of this *Notice* is to determine whether it is in the public interest, convenience, and necessity to amend our rules to allow frequency 156.250 MHz (marine VHF Channel 05A) to be used for communications related to port operations in the Los Angeles and Long Beach harbor areas. These proposed actions should protect the marine environment and increase the safety and efficiency of navigation and movement of ship by allowing the LA/LB Pilots to manage vessel traffic in that area more efficiently.

II. Legal Basis:

Authority for issuance of this *Notice of Proposed Rule Making* is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

III. Description and Estimate of the Number of Small Entities to Which Rule Will Apply

The proposed amendments will affect small businesses in the marine radio services that use a marine VHF radio. Neither the Commission nor the SBA has developed a definition of small entities applicable to marine radio services that use a marine VHF radio. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all twelve of these firms were companies that used a marine VHF radio, nearly all such companies were small businesses under the SBA's definition. We invite comment on whether this is the correct definition to use in this context.

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

There are no reporting, recordkeeping and other compliance requirements proposed.

V. Significant Alternatives to Proposed Rules Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives

The proposed rules would make frequency 156.250 MHz (marine VHF Channel 05A) available for intership communications related to port operations in the Los Angeles and Long Beach harbor areas. We believe that this flexible approach allows the LA/LB Pilots to manage vessel traffic in the Los Angeles and Long Beach harbor areas more efficiently and protect the marine environment by preventing vessel collisions and groundings. Currently under the rules frequency 156.250 MHz is currently allocated to maritime mobile and was made available for port operations purposes within the Coast Guard designated Houston and New Orleans, and Seattle Vessel Traffic Service (VTS) systems. We seek comments on whether the proposed amendment are sufficient to alleviate the communications congestion related to port operations in the Los Angeles and Long Beach harbor areas. This decision benefits small entities and seeks to ensure reliable marine communications, increase safe vessel transit to protect U.S. waters and associated natural resources from environmental harm, and increase port efficiency thereby promoting growth within the shipping community.

VI. Federal Rules Which Overlap, Duplicate or Conflict With These Rules

None.

List of Subjects

47 CFR Part 0

Administrative practice and procedure.

47 CFR Part 80

Communications equipment, marine safety.

47 CFR Part 90

Communications equipment.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Proposed Rules

Title 47 of the Code of Federal Regulations, parts 0, 80 and 90, are proposed to be amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.331 is amended by adding new paragraph (d)(3) to read as follows:

§ 0.331 Authority delegated.

* * * * *

(d) * * *

(3) Designate by footnote to frequency table in § 80.373(f) of this chapter marine VHF frequencies are available

for intership port operations communications in defined port areas.

PART 80—STATIONS IN THE MARITIME SERVICES

3. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 307 (e), 309 and 322, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307 (e), 309 and 322 unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

4. In § 80.373 (f), footnote 2 to the table is amended as follows:

§ 80.373 Private communications frequencies.

* * * * *

[2] 156.250 MHz is available for port operations communications use only within the U.S. Coast Guard designated VTS radio protection areas of New Orleans and Houston described in § 80.383. 156.250 MHz is available for intership port operations communications used only within the area of Los Angeles and Long Beach harbors, within a 25-nautical mile radius of Point Fermin, California.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

5. The authority citation for part 90 continues to read as follows:

Authority: Secs. 4, 251–2, 303, 309 and 322, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 251–2, 303, 309 and 322 unless otherwise noted.

6. Section 90.20 is amended by revising the table in paragraph (c) (3) and by adding paragraph (d)(79) to read as follows:

§ 90.20 Public Safety Pool.

* * * * *

(c) * * *

(3) * * *

PUBLIC SAFETY POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
*	* * * *	* *	
156.240	do	43, 79	PH
156.2475	do	43, 44, 79	PH
*	* * * *	* *	

* * * * *

(d) * * *

(79) This frequency will be secondary to marine port operations within 100 miles of Los Angeles (coordinates 34° 03′ 15″ north latitude and 118° 14′ 28″ west longitude).

* * * * *

[FR Doc. 99–32840 Filed 12–20–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[CC Docket No. 92–297; FCC 99–379]

Local Multipoint Distribution Service

AGENCY: Federal Communications Commission

ACTION: Notice of proposed rule making.

SUMMARY: The Commission's rules for the Local Multipoint Distribution Service (LMDS) prohibit an incumbent local exchange carrier (LEC) or incumbent cable company, or any entity with an attributable interest in these incumbents, from having an attributable interest in an A-block LMDS license whose geographic service area significantly overlaps the incumbent's service area. This LMDS eligibility rule will sunset on June 30, 2000, unless the Commission extends it. This document seeks comment on whether to allow the restriction to sunset, or to extend the restriction.

DATES: Submit comments on or before January 21, 2000; submit reply comments on or before February 11, 2000.

ADDRESSES: Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 445 12th St SW, Washington, DC 20554. See Supplementary Information for information about electronic filing.

FOR FURTHER INFORMATION CONTACT: Stacy Jordan or John Spencer, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Sixth Notice of Proposed Rule Making (Sixth NPRM) in CC Docket No. 92–297 (including the associated Initial Regulatory Flexibility Analysis), FCC 99–379, adopted December 1, 1999, and released December 13, 1999. The complete text of the Sixth NPRM and Initial Regulatory Flexibility Analysis is available on the Commission's Internet site, at www.fcc.gov. It is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW, Washington, DC, and may be purchased from the Commission's copy contractor, International Transcription Services, Inc., CY–B400, 445 12th Street SW, Washington, DC. Comments may be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html, or by e-mail to ecfs@fcc.gov.

Synopsis of the Sixth NPRM

1. The LMDS allocation consists of two primary blocks of spectrum: an A block consisting of 850 MHz at 27.5 GHz, 150 MHz at 29 GHz, and 150 MHz at 31 GHz; and a B block consisting of 150 MHz at 31 GHz. The LMDS allocation is unusual in both the size of the allocation and the extent to which the spectrum is unencumbered.

2. When the Commission adopted final LMDS rules in 1997, it assumed that the LMDS spectrum allocation provided a rare opportunity for facilities-based providers of local exchange services, multi-channel video programming distribution (MVPD) services, broadband data services, or all of the above. In order to foster competition, the Commission imposed in 47 CFR 101.1003 a short-term ownership eligibility rule prohibiting incumbent local exchange carriers (LECs) or cable companies from having an attributable interest in an LMDS A-block license that overlaps with ten percent or more of the population in their service areas. This decision was based on four considerations: the most likely uses for LMDS; the then-current market structure for local exchange services and MVPD services, and whether the incumbent operators in these markets would have the incentive to attempt to forestall competition in their respective markets; whether an eligibility restriction would be the best means to promote competition; and whether efficiencies would be lost if the LMDS spectrum were operated by

providers other than the incumbent cable operators and local exchange carriers.

3. The first LMDS products are just now becoming available in the United States, and LMDS remains a nascent market whose evolution is uncertain. Our research suggests that in the near term, LMDS may be used primarily to provide high-speed data and Internet services to small and medium-sized businesses rather than to provide services, especially MVPD services, to single-family residences. Possible other services include: video conferencing, tele-medicine, distance learning, closed-circuit applications, and backhaul or backbone applications. An industry segment aiming to provide service akin to typical landline service (including lifeline telephone service with directory assistance) has yet to emerge. CLEC holders of LMDS licenses plan to bundle local exchange services with high-speed data and Internet access services.

4. A number of factors may affect the development and deployment of these markets and the types of services offered using the LMDS spectrum. The characteristics of LMDS spectrum and equipment help determine the uses to which it will be put. Due to propagation limitations, LMDS will likely be used not as a stand-alone network, but as a ''roof-top'' means to complement or extend other existing networks. Compared to fiber, LMDS's lower cost and shorter deployment time make it an effective means of reaching the last mile. At the end of that last mile are likely to be small and medium-sized businesses in urban and suburban areas, as the propagation characteristics of LMDS favor taller buildings.

5. While multiple dwelling units may be served by LMDS in three to five years, there is a significant question whether the cost of the customer premises equipment (CPE) will forestall a business case for single-family homes for many years. Estimates for the cost of the CPE range from $5,000 to $7,000. The radio frequency hazard potential of a microwave service like LMDS may always require professional installation, precluding cost-saving consumer installation. The subscribers would also have to generate enough revenue to establish a hub from which their remote would receive a signal. The costs to establish a hub range from $300,000 to $400,000, which could become prohibitive given that the range for LMDS is limited to one-to-three miles.

6. Service affordability is another issue for the residential market. A residential market demand for broadband services at prices profitable to LMDS licensees may not exist if consumers are unwilling to pay substantially higher prices for the advantages of broadband. Early cable broadband services have experienced low penetration rates, which may indicate a reluctance of residential consumers to pay a high subscriber fee for high-speed Internet access. However, these early figures may underestimate the actual residential market for high-speed data and Internet access.

7. Deployment of LMDS systems could be delayed or hampered by lack of building access. LMDS licensees are encountering difficulties negotiating roof right-of-way agreements and overcoming inside-wiring issues. Another possible source of delay is the lack of equipment for the 150 MHz LMDS B block and the upper 300 MHz of the LMDS A block. The A-and B-block allocations are unique to the U.S. The lack of international frequency harmonization and the potential interference between the A and B blocks have been blamed for increased equipment development time and costs. Once production commences, the shorter production runs on specialized equipment may frustrate the attainment of scale economies.

8. Finally, several competing technologies are capable of delivering broadband services. Most residential and small business consumers access the Internet via the ILEC and relatively slow modems. The residential market is beginning to see high-speed services via coaxial cable, ILEC xDSL, and satellite. The rules for LMDS, MMDS, 24 GHz, and 39 GHz allow point-to-point and point-to-multipoint services, and these licensees appear to be targeting the same populations, small and medium-sized businesses. These frequencies, however, vary somewhat in their propagation characteristics, distance limitations, and spectrum allocations.

9. The Sixth NPRM seeks comment broadly on the question whether the LMDS restriction should be allowed to sunset on June 30, 2000, or should be extended. The rule provides that the restriction will terminate unless we ''extend its applicability based on a determination that incumbent LECs or incumbent cable companies continue to have substantial market power in the provision of local telephony or cable television services.'' Consistent with our findings that incumbent LECs and cable television providers continue to hold dominant positions in the local telephony and MVPD services markets, this standard would suggest that we extend the applicability of the eligibility restriction. We have significant questions, however, about whether this standard remains the appropriate one for evaluating whether we should extend the restriction, or whether a different standard is more appropriate.

10. We therefore seek comment generally on the standard that we should apply in making this decision, as well as on alternative standards. For example, our analysis in the *LMDS Report and Order*[1] suggests that the true harm to competition may lie not in the incumbent local exchange carriers' or cable companies' power in their respective markets, but in the incumbents' incentive and ability to foreclose LMDS as a source of competition in their own or related markets. Thus, we could extend the sunset of the eligibility rule upon a finding that the incumbent local exchange carriers and cable companies possess the incentive and ability to purchase the LMDS block to prevent entry of a competitor. Alternatively, we seek comment on whether we should use the test adopted in the *39 GHz Report and Order*.[2] There, we ''inquired whether open eligibility poses a significant likelihood of substantial competitive harm in specific markets, and, if so, whether eligibility restrictions are an effective way to address that harm.'' We seek comment on whether we should require that this test be met before extending the LMDS eligibility restriction. Finally, we seek comment on the sufficiency of case-by-case review of license transfers and assignments to safeguard against anti-competitive acquisition of LMDS licenses if the eligibility rule is allowed to sunset.

11. We seek comment on the likely course of LMDS market development, particularly LMDS licensees' and equipment manufacturers' current expectations for LMDS and the markets most likely to be targeted by the licensees. More specifically, we seek comment on the characteristics, technical and otherwise, of the services most likely to be provided over LMDS. We seek comment on whether LMDS will be used to provide typical landline service in some geographic areas and to what consumer groups. We seek comment on whether LMDS licensees expect to use LMDS to deliver MVPD services to single-dwelling residential customers and/or multi-dwelling residential customers in any geographic areas. Further, we seek comment on the characteristics of the consumers to which these services will be directed. Finally, we seek comment on what broadband applications, if any, are

[1] 62 FR 23148, Apr. 29, 1997.

[2] 63 FR 3075, Jan. 21, 1998.

likely to be provided by LMDS licensees, and the characteristics of the consumers that will be targeted.

12. We also plan to evaluate whether we should extend the eligibility restriction to avert the possibility of incumbent LECs and cable companies acquiring LMDS to forestall new facilities-based competition for broadband services. The net benefits of extending the eligibility restriction will depend on a number of factors, including whether the LMDS A block can serve as a facilities-based medium for broadband services, and whether this spectrum is unique in both its size and extent to which it is unencumbered. We seek comment on whether the net benefits of extending the eligibility restriction may be greater than the net benefits of permitting the incumbents to acquire the LMDS A block.

13. We seek comment on the extent and robustness of residential consumer demand for broadband services. We invite comment on the extent the cost and line-of-sight limitations of LMDS might hamper the ability of LMDS to provide effective competition to either the ILECs' or the cable operators' broadband means of access into the home or very small businesses. We seek comment on whether technological advances and increasing deployment will improve equipment range and lower equipment costs. We also seek comment on the extent to which affordability enhancing innovations like equipment leasing may emerge as an alternative to outright equipment purchase, particularly for CPE.

14. We seek comment on whether the capability of LMDS to provide high-speed data and Internet telecommunications would give incumbents a strategic incentive to acquire LMDS spectrum to forestall the use of LMDS as a means of access for another facilities-based provider of broadband services, and whether we should retain the LMDS eligibility restriction for at least some period in order to prevent such a result. With respect to cable, if the cable industry primarily serves residential areas and likely LMDS service will be to small- and medium-sized businesses, we seek comment on whether we should restrict incumbent cable companies' use of the LMDS spectrum to serve business needs for high-speed data and Internet access.

15. We invite comment about the extent to which LMDS, MMDS, 24 GHz, 39 GHz, and other media that might offer consumers broadband access are substitutable. We seek comment on the degree to which LMDS, MMDS, 24 GHz, 39 GHz, and other frequencies could be used to offer consumers similar services at similar prices; whether the size of the LMDS allocation and its lack of encumbrances provide advantages to the license holder over alternative frequencies; and whether the limitations and the cost of LMDS will hamper the ability of LMDS to provide effective competition for services provided by either the incumbent LECs or cable operators. We seek comment on the limitations (capacity, rain fade, and line of sight) of these other wireless services relative to LMDS. We seek comment on the extent to which the time-to-market leads of the 24 MHz and 39 MHz licensees yield competitive advantages in high-speed data and Internet access that could handicap LMDS licensees. Given the similarities between LMDS and 24 GHz and 39 GHz spectrum, we seek comment on the implications of the lack of eligibility restrictions at the latter two frequencies.

16. We seek comment on whether the broadband offerings by ILECs and incumbent cable operators justifies extending the restriction to either ILECs or incumbent cable companies, or both. We seek comment on the likelihood that LMDS, if used for broadband, will provide effective competition against incumbent LECs' and cable operators' broadband offerings. Specifically, we invite comments on the incumbent LECs' and cable operators' most likely footprints for broadband services. Cable operators' current coverage areas do not lend themselves to providing broadband access to businesses. We invite comment on the present reach of cable networks and the ease with which these networks could be extended to reach business subscribers. In addition, we seek comment on whether the ILECs are likely to provide xDSL services to a large segment of residential or business customers. We seek comment on whether the equipment cost and deployment cost of LMDS relative to ILECs' T–1 leased lines or xDSL will disadvantage LMDS in the market. To the extent LMDS and a T–1 line are substitutes, the falling prices for T–1 leased lines may diminish the profitability of LMDS service.

17. We seek comment on the significance of uncertainty in the market for the eligibility restriction. There are uncertainties regarding how LMDS equipment will continue to evolve; how fast LMDS equipment costs will fall; how much difficulty licensees will encounter negotiating roof right-of-way agreements, interconnection agreements, and other necessary negotiations to provide services; and how the domestic LMDS market will develop. These uncertainties may have led firms to hold off investments until there is less uncertainty in the market, and may warrant delaying the sunset of the eligibility restriction. We seek comment on these concerns and on whether the Commission should extend the eligibility restriction to allow the market more time to reveal how LMDS and competing media will be marketed and deployed.

18. Finally, we note that uncertainty in the market impacts bond and stock market activity. The uncertainty surrounding LMDS may spill over into the capital markets and impede the efforts of LMDS licensees to raise debt and equity capital. We seek comment on the effect of extending, or not extending, the eligibility restriction on LMDS licensees' access to capital. While extending the eligibility restriction might encourage investment, lifting the restriction could have a similar effect: that is, large investors currently prohibited from doing so might acquire significant stakes in LMDS licensees, stimulating investment therein. We seek comment on both scenarios. We also seek comment on the concerns of small entities on the various issues discussed above.

Summary of Initial Regulatory Flexibility Analysis

19. As required by the Regulatory Flexibility Act (RFA),[3] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible economic impact on small entities by the policies and rules suggested in this Sixth NPRM. Written public comments are requested on the IRFA. Comments should be identified as responses to the IRFA, and must be filed by the deadlines for comments on the Sixth NPRM provided above. The Commission will send a copy of the Sixth NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

20. *Need for and Objectives of the Proposed Rule:* In this Sixth NPRM, the Commission seeks comment on whether to allow the eligibility restriction for the Local Multipoint Distribution Service (LMDS) set out in 47 CFR 101.1003(a) to sunset as scheduled, or to extend the restriction. As discussed in detail above, various policy reasons might dictate action for or against the sunset.

21. *Legal Basis:* See Authority section, below.

22. *Description and Estimate of the Number of Small Entities to Which the*

[3] U.S.C. 603. The RFA, 5 U.S.C. 601 et seq., has been amended by the Contract with America Advancement Act, Pub. L. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

Actions Taken May Apply: 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 action taken. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [4] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[5] A small business concern is one that: (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).[6] Below, we further describe and estimate the number of small business concerns that may be affected by the actions taken in this Sixth NPRM.

23. The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees.[7] We first discuss the number of small telecommunications entities falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telecommunications companies that are commonly used under our rules, and that may be affected by this Sixth NPRM.

24. *Total Number of Telecommunications Entities Affected.* The Census Bureau reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[8] This number contains a variety of different categories of entities, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the actions taken in this Second Report and Order.

25. The most reliable source of current information regarding the total numbers of common carrier and related providers nationwide, including the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Carrier Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS).[9] According to data in the most recent report, there are 3,604 interstate carriers. These include, inter alia, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

26. We have included small incumbent local exchange carriers (LECs) in this RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope.[10] We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

27. *Wireline Carriers and Service Providers (SIC 4813).* The Census Bureau reports that there were 2,321 telephone communications companies other than radiotelephone companies in operation for at least one year at the end of 1992.[11] All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the actions taken in this Sixth NPRM.

28. *Local Exchange Carriers.* Neither the Commission nor SBA has developed a definition of small LECs. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[12] The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, there are 1,410 LECs. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,410 small entity LECs or small incumbent LECs that may be affected by the actions taken in this Sixth NPRM.

29. *A-Block LMDS Providers.* The total number of A-block LMDS licenses is limited to 493, one for each Basic

[4] 5 U.S.C. 601(6).

[5] U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.'' 5 U.S.C. 601(3).

[6] Small Business Act, 15 U.S.C. 632.

[7] 13 CFR 121.201.

[8] 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, Bureau of the Census, U.S. Dept. of Commerce, at Firm Size 1–123 (1995) (1992 Census).

[9] Carrier Locator: Interstate Service Providers, Fig. 1 (Jan. 1999) (Carrier Locator). See also 47 CFR 64.601-.608.

[10] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of ''small business concern,'' which the RFA incorporates into its own definition of ''small business.'' See 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. 13 CFR 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket No. 96–98, First Report and Order, 11 FCC Rcd 15499, 16144–45 (1996).

[11] 1992 Census, supra, at Firm Size 1–123.

[12] 13 CFR 121.210, SIC Code 4813.

Trading Area.[13] The Commission has held auctions for all 493 licenses, in which it defined ''very small business'' (average gross revenues for the three preceding years of not more than $15 million), ''small business'' (more than $15 million but not more than $40 million), and ''entrepreneur'' (more than $40 but not more than $75 million) bidders.[14] There have been 99 winning bidders that qualified in these categories in these auctions, all of which may be affected by the actions taken in this Sixth NPRM.

30. *Cable Services or Systems.* The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in revenue annually.[15] This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than $11 million in revenue.

31. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide.[16] Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

32. The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.''[17] The Commission has determined that there are 66 million subscribers in the United States. Therefore, we found that an operator serving fewer than 660,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[18] Based on available data, we find that the number of cable operators serving 660,000 subscribers or less totals 1,450. We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. It should be further noted that recent industry estimates project that there will be a total of 66 million subscribers.

33. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements:* In this Sixth NPRM we seek comment on whether to allow the existing LMDS eligibility restriction to sunset. These actions impose no reporting, recordkeeping or other compliance requirements.

34. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered:* This Sixth NPRM is a broad inquiry into whether there continues to be a need for an LMDS ownership restriction. It seeks comment on the present and likely future nature of the marketplace for various services that may be offered using LMDS spectrum, the costs and benefits of a restriction, and appropriate criteria for evaluating whether to extend the restriction. It also seeks the views of small businesses on the various issues raised.

35. *Federal Rules That May Overlap, Duplicate, or Conflict with the Proposed Rules:* There are no federal rules that overlap, duplicate or conflict with 47 CFR 101.1003(a).

36. *Report to Congress:* The Commission will send a copy of this Sixth NPRM, including this IRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.[19] In addition, the Commission will send a copy of this Sixth NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. Summaries of this Sixth NPRM and IRFA will be published in the **Federal Register**.

List of Subjects in 47 CFR Part 101

Communications, local multipoint distribution service.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–33005 Filed 12–20–99; 8:45 am]

BILLING CODE 6712–01–P

[13] 47 CFR 101.1005, 101.1007.

[14] 47 CFR 101.1107(a)-(c), 101.1112.

[15] 13 CFR 121.201, SIC 4841.

[16] 47 CFR 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration,* 10 FCC Rcd 7393 (1995), 60 FR 10,534 (Feb. 27, 1995).

[17] 47 U.S.C. 543(m)(2).

[18] 47 U.S.C. 76.1403(b).

[19] See 5 U.S.C. 801(a)(1)(A).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 99–6550]

RIN 2127–AH16

Federal Motor Vehicle Safety Standards: Heavy Vehicle Antilock Brake System (ABS) Performance Requirement

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

ACTION: Notice of proposed rulemaking.

SUMMARY: On March 10, 1995, NHTSA published a final rule amending the hydraulic and air brake standards to require medium and heavy vehicles to be equipped with antilock brake systems (ABS) to improve the directional stability and control of these vehicles during braking. We supplemented the ABS requirements for truck tractors with a braking-in-a-curve performance test on a low-coefficient of friction surface, using a full brake application, in both the unloaded (bobtail) condition and with the tractor loaded to its gross vehicle weight rating (GVWR) using an unbraked control trailer. The braking-in-a-curve test was not applied to single-unit trucks or buses or to air-braked trailers because we had performed only limited testing of ABS-equipped single-unit vehicles. We stated that we would continue research on dynamic performance tests for single-unit trucks, buses, and trailers, and would consider applying performance test requirements to these vehicles in the future.

The agency is now proposing to apply the braking-in-a-curve dynamic performance test requirement to single-unit trucks and buses that are required to be equipped with antilock braking systems. After issuing the March 1995 final rule, we tested several ABS-equipped single-unit trucks and buses equipped with both hydraulic and air

brakes. We tentatively conclude that the test results confirm that the braking-in-a-curve performance test requirement is practicable for those vehicles. Adopting this requirement would complement the ABS equipment requirements and stopping distance requirements. Taken together, these requirements would improve the ability of the affected vehicles to stop in a stable and controllable manner.

DATES: *Comment closing date:* You should submit your comments early enough to ensure that Docket Management receives them not later than February 22, 2000.

ADDRESSES: You should mention the docket number of this document in your comments and submit them in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC, 20590.

You may call Docket Management at 202–366–9324. You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues, you may call Mr. Jeff Woods, Safety Standards Engineer, Office of Crash Avoidance Standards, Vehicle Dynamics Division at (202) 366–2720, and fax him at (202) 493–2739.

For legal issues, you may call: Mr. Otto Matheke, Attorney-Advisor, Office of the Chief Counsel at (202) 366–2992, and fax him at (202) 366–3820.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC, 20590.

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I. Background

On December 18, 1991, Congress passed the Intermodal Surface Transportation Efficiency Act (ISTEA or Act), Pub. L. 102–240. Section 4012 of the Act directed the Secretary of Transportation to initiate rulemaking for improving the braking performance of new commercial motor vehicles, *i.e.,* those with GVWRs of over 26,000 pounds (lbs.), including truck tractors, trailers, and dollies. The Act directed that in that rulemaking, the agency examine antilock brake systems (ABS), means of improving brake compatibility, and methods of ensuring the effectiveness of brake timing.

In response to that congressional mandate, we published an advance notice of proposed rulemaking (ANPRM) on June 8, 1992 announcing our interest in proposing improvements in the directional stability and control of heavy vehicles during braking (57 FR 24212). That notice requested comments on such issues as the occurrence of loss-of-control crashes; the availability and performance of systems to improve directional stability and control; anticipated performance requirements, test procedures, and equipment requirements; diagnostic equipment to ensure in-use functioning of the systems; and anticipated costs of such equipment. The notice also requested comments on whether to include vehicles with GVWRs between 10,000 and 26,000 lbs. in the rulemaking action.

NHTSA received comments in response to the ANPRM from heavy vehicle manufacturers and users, brake manufacturers, safety advocacy groups, trade associations, state entities and individuals. Most agreed that we should take action to improve the stability and control of heavy vehicles during braking to reduce the number of loss-of-control crashes. Commenters also addressed the application of potential rulemaking to certain vehicles, test procedures, warning and diagnostic systems, an implementation schedule for the requirements, and the costs of the hardware.

We next published a notice of proposed rulemaking (NPRM) on September 28, 1993 (58 FR 50738) to amend Federal Motor Vehicle Safety Standard (Standard) Nos. 105, *Hydraulic brake systems* (now titled *Hydraulic and electric brake systems*), and 121, *Air brake systems*, to require all air-braked and hydraulic-braked vehicles with GVWRs over 10,000 lbs. to be equipped with ABS to improve the lateral stability and control of these vehicles during braking. The NPRM also proposed that the ABS requirement be supplemented by a braking-in-a-curve test on a low coefficient of friction surface using a full brake application.

We published a final rule requiring ABS on hydraulic and air-braked medium and heavy vehicles on March 10, 1995 (60 FR 13216) (hereinafter referred to as the stability and control final rule). The ABS requirements included a braking-in-a-curve performance test on a low-coefficient of friction surface for truck tractors only. The test includes a full brake application in both the unloaded (bobtail) configuration and with the tractor loaded to its GVWR, the latter using an unbraked control trailer.

The braking-in-a-curve test was not applied to single-unit trucks, buses, or air-braked trailers at that time. Our Motor Vehicle Safety Research Advisory Committee's ABS Task Force had developed the braking-in-a-curve test procedure only for truck tractors. Since neither the agency nor the Task Force had included single-unit vehicles in the test program up to that time, we decided that, in view of the limited available data with respect to such vehicles and the concerns expressed by the American Automobile Manufacturers Association and other commenters about this dynamic performance test, we would apply the braking-in-a-curve test to truck tractors only. We stated, however, that we would continue research on dynamic performance tests for single-unit vehicles and would consider applying performance test requirements to those vehicles at a future time [1] (see section II below for a discussion of the testing of single unit trucks and buses that gave rise to this rulemaking action).

II. Single-Unit Truck and Bus ABS Performance Testing

NHTSA conducted ABS testing of single-unit trucks and buses in 1996 and 1997 at our Vehicle Research and Test

[1] The agency published two companion final rules on the same day, one to reinstate stopping distance requirements for air-braked medium and heavy vehicles (60 FR 13286) and another to implement stopping distance requirements for hydraulic-braked medium and heavy vehicles (60 FR 13297). The cost/benefit information used for the three final rules was based on NHTSA's Final Economic Assessment, *Final Rules, FMVSS Nos. 105 & 121, Stability and Control During Braking Requirements and Reinstatement of Stopping Distance Requirements for Medium and Heavy Vehicles*, published in February, 1995.

Center (VRTC) in East Liberty, OH[2]. Five air-braked straight trucks and two hydraulic-braked buses, all equipped with ABS, were used in the tests to aid in determining if the braking-in-a-curve performance test for tractors could also be applied to single-unit vehicles. The vehicles were subjected to all the requirements of Standards No. 105 and No. 121, including the braking-in-a-curve performance tests.

The braking-in-a-curve tests were conducted by first finding the maximum drive-through speed, then determining the maximum brake-through speed. Maximum drive-through speed is defined in Standard No. 121 as the fastest constant speed that a vehicle can be driven through at least 200 feet of curve arc length without departing the lane. Maximum brake-through speed is defined as the fastest speed at which a full brake application can be made while the vehicle is in the curve, without the vehicle departing the lane. Determination of the maximum brake-through speed provided data on the potential margin of compliance or non-compliance for the test vehicles. More than four stops for the braking-in-a-curve test were performed during the loaded and unloaded tests.

The straight trucks were chassis-cabs without bodies or equipment that would normally be installed by a second-stage manufacturer. The vehicles were equipped with ABS systems that met the equipment requirements of Standard No. 121. In order to simulate the unloaded condition of completed vehicles, a 2,500 lb load frame was installed on the chassis cabs. The load frame, which is used to secure ballast to the vehicle for testing in the loaded condition, includes a built-in roll bar to protect the test driver in the event of rollover during the tests. The instrumentation for collecting the test data, and the test driver, added another estimated 250 pounds to the unloaded vehicle test weight. Tests were conducted with all fuel tanks and fluid reservoirs filled to normal capacity.

To test the straight trucks in the loaded condition, we added steel and/or concrete weights to the load frame so that the total weight of the vehicles was in accordance with their GVWRs and the axle loads were in proportion with their GAWRs. For most of the vehicles, the loads were situated so that the centers of gravity of the loads were 32 inches above the frame. This provided a ballast height which corresponded to the specification in Standard No. 121 that the control trailer used for truck tractor road tests have a ballast center of gravity height not more than 24 inches above the flat bed surface of the control trailer. The 32-inch load height for single unit trucks is eight inches higher than for truck tractors to account for the height from the tractor's frame rails to the top of the control trailer, due to the fifth wheel coupling arrangement. For two of the vehicles, however, we conducted additional tests in the fully loaded condition with the load elevated to the maximum height specified by the manufacturer in their final-stage manufacturer's guidelines. These two tests with elevated center of gravity loadings were conducted to give some indication of the effect center of gravity height has on braking performance in the braking-in-a-curve test.

The two school buses were equipped with ABS systems that met the ABS equipment requirements of Standard No. 105 that became effective on March 1, 1999. Since they were complete vehicles, no load frame or ballast was added for tests in the unloaded condition. However, the test instrumentation and driver added approximately 250 pounds to the unloaded vehicle weight. In addition, all fuel tanks and fluid reservoirs were filled to normal capacity. The loaded tests on the two school buses were conducted by placing sand bags on the floor and seats of each bus such that the total vehicle weight was equal to its GVWR with the axle load in proportion with the vehicle's GAWR.

The braking-in-a-curve tests were conducted on an asphalt surface that was coated with Jennite, a driveway sealer, and wetted using a water truck. A 12-foot-wide lane was marked with the center of the lane having a 500-foot radius of curvature. The lane was marked with traffic cones on both sides spaced at 20-foot intervals. The surface had a cross slope of one percent and approximately zero longitudinal slope. The peak coefficient of friction (PFC) of the surface during the time of the testing ranged from 0.34 to 0.41. The effect of the cross slope was such that the test condition was considered to be worst case, since all road testing may not be able to be conducted on a completely level road surface due to variability and water run-off design requirements. The effect of the lower PFC would also be considered a worst-case test condition.

In conducting the tests, the driver was instructed to begin the test in the center of the lane and to steer as necessary to keep the vehicle within the lane. If any cones were hit, the vehicle was considered to have gone out of the lane. The maximum drive-through speed was determined by making passes through the lane at a constant speed and increasing or decreasing the speed slightly on each successive pass to determine the maximum speed at which the vehicle would remain within the lane. Once this speed was determined, two or three additional passes were made to verify that the speed determined was the maximum speed at which the vehicle would remain in the lane. Similarly, the maximum brake-through speed was determined by making successive stops, increasing the speed gradually each time, to find the maximum speed at which the vehicle would stay in the lane. For these stops, the brake was applied as rapidly as possible to a full pressure application or full travel condition and held until the end of the stop.

The results of the testing at VRTC confirmed that the braking-in-a-curve test is practicable, repeatable, and safe for single unit vehicles. Six of the seven vehicles tested met the performance requirements now in effect for tractors, i.e., they stayed in the lane in at least three out of four stops when subjected to maximum braking at 75 percent of the maximum drive-through speed. In fact, these six vehicles remained in the lane during all four stops at 75 percent of the drive-through speed, all with a large margin of compliance.

The two trucks for which elevated center-of-gravity ballast height comparison tests were conducted showed that the increased height did not have much effect on the vehicle's performance compared with the lower, 32-inch ballast center-of-gravity height testing. The test driver commented that this test condition caused an unsettling feeling during the testing in the vehicle's roll stability. However, to observers watching the testing, there were no indications that the vehicles were nearing rollover, such as lifting of an inside tire.

We note that the one vehicle that did not meet the 75 percent of drive-through speed requirements was equipped with heavy duty axles with GAWR ratings of 20,000 pounds for the steer axle and 30,000 pounds for the single drive axle. Paragraph S3(b) of Standard No. 121 provides that any vehicle with an axle that has a GAWR of 29,000 pounds or more is excluded from Standard No. 121. Therefore, this particular vehicle would not need to comply with the braking-in-a-curve test. If a manufacturer were to produce this vehicle to comply voluntarily with Standard No. 121, regardless of the exclusion for axles over 29,000 pounds, additional ABS development would probably be necessary. We note also that

[2] DOT HS 808941, *Single Unit Truck and Bus ABS Braking-In-A-Curve Performance Testing*, February 1999.

while this vehicle did not meet the proposed requirements when tested in the unloaded condition, it passed the tests in the loaded condition by staying in the lane in all four of the stops at 75 percent of the drive-through speed.

III. Proposed Braking-in-a-Curve Test for Single-Unit Trucks and Buses

Based on the tests conducted at VRTC, NHTSA proposes a braking-in-a-curve test for single-unit trucks and buses, similar to the stability and control performance test in effect for air-braked tractors. We propose slight modifications, however, to allow for the differences between tractors and single-unit vehicles and to accommodate vehicles with hydraulic braking systems. Specifics of the proposed test are provided in the following subsections.

A. Air-Braked Trailers Not Included

NHTSA is not proposing at this time to apply performance test requirements to air-braked trailers. We have not conducted testing of trailers since the March 1995 final rules, but may resume research concerning trailer dynamic performance tests at a later date.

B. Testing in the Loaded/GVWR Conditions

NHTSA proposes that the braking-in-a-curve test be conducted in both the lightly-loaded vehicle condition and with the vehicle loaded to GVWR. There are several reasons why we are proposing testing in both loading conditions. First, this would be consistent with the test procedure currently in place for tractors. Second, testing in the fully-loaded and empty conditions was specified in the stability and control final rule in order to fully evaluate the vehicle's braking performance at two extreme loading conditions. The intent was to determine the minimum number of test conditions that would provide a thorough evaluation of a vehicle's braking system. Third, we determined that these two loading conditions, evaluated in the single braking-in-a-curve maneuver, provide a sufficient range of test conditions while still providing a minimum level of performance testing.

The agency is aware of a discussion in the SAE Truck and Bus Vehicle Deceleration and Stability Subcommittee that braking-in-a-curve testing of medium and heavy vehicles is only needed in the lightly-loaded condition. The discussion, which took place at the 1995 SAE Truck and Bus Exposition in Winston-Salem, N.C., centered around testing performed by member organizations of the subcommittee indicating that vehicles in the lightly-loaded test condition have a lower margin of compliance than vehicles tested in the loaded condition.

Our testing at VRTC indicated the following for the seven vehicles tested with regard to the proposed 75 percent maximum brake-through to maximum drive-through test requirement: (a) Four vehicles had lower margins of compliance in the lightly-loaded tests than in the loaded tests; (b) two vehicles had the same margin of compliance in both the loaded and lightly-loaded tests; and (c) one vehicle had a higher margin of compliance in the lightly-loaded test than in the loaded test. These results indicate that in general, the lightly-loaded test condition is the most severe test. We note, however, that the margin of compliance was generally high for most of the vehicles tested. The intent of testing vehicles in both the lightly-loaded and GVWR conditions was to simulate the possible braking conditions and maneuvers likely to be encountered by vehicles operated on public roads, while minimizing the number of tests that would have to be conducted to certify compliance. Deleting the loaded-to-GVWR test condition would eliminate the range of test conditions resulting in a single, lightly-loaded test. Although we are not proposing to eliminate testing at GVWR, we welcome comments on this issue.

C. Road Test Geometry

NHTSA proposes the same road test geometry now in effect for tractors, namely a 12-foot-wide lane with a 500-foot radius measured at the center of the lane. We consider this geometry to be representative of an exit ramp with a moderately sharp curve, a type of road that all vehicles could be expected to encounter at some time. One consideration in the use of this test geometry for single-unit vehicles is that the wheelbases of such vehicles can be longer than for tractors or of the control trailer kingpin-to-axle length. Since most heavy vehicles are equipped with a non-steering rear axle(s), the path of the rear axle of a single-unit truck during a slow-speed turning maneuver follows a smaller radius than the wheels on the front steer axle. The tests conducted at VRTC, which included testing vehicles with wheelbases ranging from 148 inches through 311 inches, did not indicate any problems with the inside wheels on the rear axle(s) running off the inside of the curve and departing the lane. We believe, therefore, that the 500-foot radius curve is large enough to avoid that problem during testing of single-unit vehicles.

D. Test Surface

We propose a test surface having a PFC of 0.5, which is a low coefficient of friction surface representative of a wet, worn asphalt roadway. As we noted in the stability and control final rule, maintaining a test surface of 0.5 PFC may not always be possible. However, minor variations in the test surface are not expected to have a major effect on the performance of vehicles in the braking-in-a-curve test, since that test has no stopping distance requirements. We have also determined that specifying PFC test surfaces is more appropriate for both high and low-friction surface testing compared to the older method of specifying skid numbers. This is especially true for ABS-equipped vehicles which, during maximum braking, are prevented from sustained wheel lockup. The testing conducted at VRTC confirmed that this is the case for the medium and heavy single-unit vehicles tested and that specifying a PFC of 0.5 is appropriate for the braking-in-a-curve test.

E. Test Speed

NHTSA proposes a test speed of 75 percent of the maximum drive-through speed or 30 mph, whichever is lower, for the braking-in-a-curve test for single unit trucks and buses.

The requirement for testing tractors at the lower value of either 30 mph or 75 percent of the maximum drive-through speed resulted from the need to have sufficient vehicle speed to adequately evaluate the performance of an ABS-equipped braking system. The test speed needed to be limited, however, to ensure that the test procedure could be safely conducted. In addition, by conducting the maximum drive-through speed determination before the braking-in-a-curve test, the effects of slight variability in test surface friction would be minimized since the drive-through speed would be measured for each combination of test vehicle and test surface just prior to conducting the braking tests.

All of the single-unit trucks and buses tested at VRTC had maximum drive-through speeds in both the empty and loaded conditions ranging between 32 and 37 mph. This range represents the maximum constant speed that the vehicle can be driven through 200 feet of curve arc (for a 500-foot radius curve) without the driver's losing control and the vehicle's departing the lane. None of the vehicles was able to negotiate the curve at 40 mph, which would be the upper limit of the drive-through speed determination required for a braking strategy specified as the lower of 30

mph or 75 percent of maximum drive-through speed. Therefore, these speeds are sufficiently high to place the vehicles at their performance limit for cornering under this test condition. Further, conducting a maximum brake application at 75 percent of this speed is a rigorous test of ABS performance.

The testing at VRTC also indicated that the test speeds were not so high as to pose an unreasonable risk to the test drivers or vehicles. When the vehicles did lose control during the determination of the maximum drive-through speed, the test drivers were able to regain control in a short time and bring the vehicle to a safe stop. The test vehicles were equipped with a roll bar in the event of vehicle rollover during testing. However, no rollovers occurred nor were there any indications of near-rollover, although as noted above, the testing with high-center-of-gravity loadings did result in an unsettling feeling for the test driver.

F. Type of Brake Application.

NHTSA proposes a brake pedal force of 150 pounds that is to be achieved within 0.2 seconds from the initial application of force to the brake control and maintained for the duration of the stop.

We stated in the stability and control final rule that the braking-in-a-curve test evaluates vehicle stability and control during worst case braking applications in an aggressive or ''hard'' stop. In that scenario, full brake applications are more readily repeatable than ''driver best effort'' brake applications. A full treadle brake application for air-braked tractors is defined in Standard No. 121 as the output pressure measured at any of the treadle valve output circuits reaching 85 psi within 0.2 seconds after the application is initiated, or, as amended in the December 1995 final rule, one in which maximum treadle travel is achieved within 0.2 seconds after the application is initiated. Since the actuation of air brakes in single-unit vehicles is similar to that used in tractors, we consider this same approach to be valid for single-unit vehicles as well. The tests at VRTC confirmed that the minor differences in the service braking systems between tractors and the single-unit vehicles tested were not found to have an effect on the ability of achieving the 85 psi application within 0.2 seconds as measured at the treadle valve. We are aware that, because of the wide variety of single-unit vehicles, there may be vehicles that would not be able to achieve this application rate. In those cases, achieving maximum treadle travel within 0.2 seconds would be considered sufficient to define a full brake application.

Standard No. 105 does not currently include a definition of a full brake application for medium and heavy vehicles equipped with hydraulic braking systems. Performance requirements for the first effectiveness stop for school buses with GVWRs of over 10,000 lbs. and the second and third effectiveness stops for all vehicles with GVWRs of over 10,000 lbs. do not include specifications for maximum brake pedal force during these tests. For the five fade and recovery stops that apply to vehicles with GVWRs of over 10,000 lbs., the maximum permissible pedal force is 150 lbs. during the first four of these stops. The water recovery test requirements also include a 150-lbs. maximum pedal force requirement during the first four stops. These tests do not require that the maximum pedal force be used nor do they specify an application rate. The spike stops required for vehicles with GVWRs of less than 10,000 lbs. include a specification for a 200-lb. brake pedal application within 0.08 seconds, and is representative of a maximum braking condition such as a ''panic'' stop. However, this high level of pedal force may make it necessary to use a mechanical actuator to achieve and maintain the 200-lb. force. Since the purpose of the proposed braking-in-a-curve test for medium and heavy vehicles is to evaluate the stability and control during a ''hard'' stop, rather than specifically a ''panic'' stop, we tentatively conclude that a pedal force of 150 lbs. is sufficient to perform the braking-in-a-curve evaluation, without necessitating specialized test equipment. In addition, since the proposed test surface has a PFC of 0.5, which represents a slippery road surface, we tentatively conclude that the 150 lbs. of pedal force is sufficient to cause instability and loss of control in many medium or heavy vehicles that are not equipped with ABS.

The agency considers the proposed 0.2 seconds for achieving the 150-lbs. brake pedal force to be sufficiently rapid to represent a hard stop in a medium or heavy vehicle equipped with hydraulic brakes, and practicable from the standpoint of conducting performance tests on these type vehicles. While the spike stop requirements for vehicles under 10,000 lbs. GVWR include achieving the pedal application force within 0.08 seconds, the heavier brake components typically used in medium and heavy vehicles equipped with hydraulic brakes may not be able to be actuated as rapidly as in light vehicles. Also, the 0.08 second application rate for the spike stops in light vehicles is often achievable only with a mechanical brake pedal actuator. In all of the braking-in-a-curve tests conducted by VRTC on medium and heavy vehicles with both hydraulic and air brakes, the test driver applied the brakes to minimize test complexity. This may also slightly increase the application time needed compared to a mechanical brake pedal actuator.

NHTSA is not proposing to specify the brake pedal application rate for medium and heavy vehicles equipped with hydraulic brakes to include a reference to maximum pedal travel, as is specified for air-braked vehicles. The brake pedals in hydraulic braking systems do not typically reach their physical limit of travel during ''hard'' or ''panic'' stops. Therefore, we believe that specifying such a brake application rate strategy for hydraulic-braked vehicles would be inappropriate.

G. Number of Test Stops

NHTSA proposes that in 4 consecutive stops, the required performance must be achieved in at least 3 of those stops.

In the stability and control final rule, we required that tractors comply with the braking-in-a-curve test requirements during 3 consecutive stops. In response to several petitions for reconsideration, we amended that requirement in the December 13, 1995 final rule to include one additional stop in which compliance is not required. Thus, the requirement now is that tractors must comply with the braking-in-a-curve test requirements in 3 out of 4 consecutive stops. This allows for minor variability in the performance of the test driver.

Earlier testing of ABS-equipped tractors showed that the ABS provided consistent performance in maintaining stability and control during the braking-in-a-curve test. Although one vehicle could not comply with the braking-in-a-curve test during the VRTC testing of ABS-equipped straight trucks and buses, the vehicles that did stay in the lane during the test were able to do so consistently. We believe, therefore, that it is appropriate to include that same number of test stops for straight trucks and buses as we now require for tractors, namely that during 4 consecutive stops, the required performance must be met in at least 3 of those stops (see H below).

H. Required Performance

NHTSA proposes to require that the test vehicle remain within a 12-foot-wide lane during the braking-in-a-curve test.

We believe that prescribing a 12-foot-wide lane during the braking-in-a-curve test is an appropriate performance measure for single-unit trucks and buses. The lane width of 12 feet is representative of a typical travel lane on a typical U. S. hard-surface road. Therefore, we tentatively conclude that it is appropriate to require that vehicle control within a lane of that width be maintainable by a driver during hard braking.

I. Lightly-Loaded Test Weight

NHTSA proposes that the braking-in-a-curve test in the lightly-loaded condition be conducted at the curb weight of the vehicle plus up to 1,500 pounds, including the driver, instrumentation, and roll bar.

As discussed above, the single-unit trucks tested at VRTC were chassis-cabs which had not been completed by the installation of a body or other equipment. In order to provide some additional weight to the chassis-cabs to better simulate an unloaded completed vehicle, a 2,500 pound load frame was bolted directly to the frame rails of each test vehicle. This load frame was also used to secure ballast for tests conducted in the loaded condition. As noted above, we are aware of the discussion in the trucking industry, through the SAE Truck and Bus Vehicle Deceleration and Stability Subcommittee, as to what suitable weight should be used for a load frame for testing incomplete vehicles. We do not propose that any weight figure be specified in the stability and control requirements for Standard Nos. 105 and 121. We are aware of the wide variety of bodies and equipment that are installed on chassis-cabs and the variability in the weight of that equipment. Selection of one weight for a load frame may be appropriate for one weight class of vehicle, but not for another. Thus, unlike the vehicles we tested at VRTC, we do not conduct compliance testing on incomplete vehicles. For the purposes of compliance testing, we will obtain completed vehicles and expect to test them at their curb weight, plus an allowance for test and safety equipment, as discussed below.

The VRTC tests of buses in the unloaded configuration were performed on completed vehicles, so no additional weight, other than the driver and instrumentation, was added for the unloaded tests. The tests were conducted with the buses at curb weight with full fuel tanks. The combined weight of the test driver and instrumentation was approximately 250 pounds.

A January 6, 1997 petition for rulemaking submitted by the Truck Manufacturers Association (TMA) to amend Standard No. 121 included, among other things, a request for an additional weight allowance for a rollbar of up to 1,000 pounds for the straight line stopping distance tests for tractors, trucks, and buses in the lightly-loaded condition. The rollbar is intended to provide driver protection in the event of a rollover that could occur while testing heavy vehicles in limit-performance maneuvers. [The rollbar portion of the TMA petition was granted. In a notice published in the **Federal Register** on February 3, 1999 we proposed allowing the use of a rollbar in compliance testing (64 FR 5259).] We believe that in order to provide adequate protection for test drivers, the same provision for a rollbar should be permitted for the braking-in-a-curve test for single-unit vehicles. Therefore, we propose that the braking-in-a-curve test in the lightly-loaded condition include the unloaded vehicle weight plus up to 1,500 pounds for driver, instrumentation, and a rollbar. The 1,500 lb figure is based on the existing definition of ''lightly-loaded vehicle weight'' for vehicles with GVWRs of over 10,000 lbs. and the 1,000 lbs. for a rollbar. That term is defined in S4 of Standard No. 105 as the unloaded vehicle weight plus up to 500 lbs., including driver and instrumentation. This weight provision need not be included for tests in the fully-loaded condition since the weight of these items would be included as part of the load.

J. Loaded Test Weight

NHTSA proposes to use the existing definitions of ''loaded test weight'' in Standard Nos. 105 and 121 for the braking-in-a-curve tests for single-unit trucks and buses.

The existing definitions, which are used for straight-line stopping distance tests required for loaded single-unit trucks and buses, specify that the vehicle be loaded to its GVWR in proportion to each GAWR. An exception is provided in Standard No. 105 for cases in which an axle weight in the unloaded condition already exceeds its proportional GAWR with the vehicle loaded to GVWR. In such cases, the vehicle is loaded only over the other axle(s) until the GVWR is reached.

The loading requirements for tractors in Standard No. 121, applicable to both straight line stopping distance and braking-in-a-curve tests, provide that the center of gravity height of the ballast shall be less than 24 inches above the fifth wheel of the tractor. This is a relatively low center of gravity loading that is used to evaluate the braking performance of loaded tractors during the braking-in-a-curve test and minimizes the risk of vehicle rollover during the test. This loading condition also provides a uniform test condition for tractors so that results will be repeatable from one test to another.

The loading of straight trucks during the braking-in-a-curve tests conducted at VRTC included a load frame and ballast with a combined center of gravity height of 32 inches above the frame rail of the chassis cab. This loading scheme was selected to adequately evaluate the braking performance of the trucks while minimizing the risk of rollover. The purpose of the braking-in-a-curve test is to evaluate the vehicle's yaw stability and the driver's ability to maintain steering control, not to evaluate the vehicle's roll stability. Therefore, a reasonable loading scheme with respect to load center of gravity height is needed to ensure the safety of the test procedure.

As in the case with the unloaded single-unit truck and bus vehicle tests, we do not conduct compliance testing on incomplete vehicles in the loaded condition. Since there are many configurations of bodies and equipment used in the completion of single-unit trucks, including flatbeds, tankers, van bodies, dump bodies, rollbacks, mixers, etc., and other configurations of vehicles not based on typical chassis-cabs, such as step vans, motor homes, and certain fire trucks, we believe that it would not be possible to specify a loading scheme that would be applicable to all single-unit trucks and buses. We are aware of efforts by the SAE Truck and Bus Vehicle Deceleration and Stability Subcommittee to revise Recommended Practice (RP) J1626, *Braking, Stability, and Control Performance Test Procedures for Air-Brake Equipped Trucks,* to incorporate loading requirements which can be used for testing incomplete chassis-cabs. However, we do not expect that this RP will address testing of completed single-unit vehicles or incomplete/completed vehicles manufactured on other types of chassis. For many types of vehicles, we will need to develop suitable loading schemes on a case-by-case basis, depending on the vehicle type. For example, a passenger bus could be loaded using sand bags or other heavy objects placed in all passenger seating positions and on the floor or in cargo areas to achieve GVWR loading in proportion to the vehicle's GAWRs.

K. Initial Brake Temperature

NHTSA proposes an initial brake temperature between 150 and 200 degrees F.

In the September 1993 NPRM, we proposed using a higher initial brake temperature range of 250 to 300 degrees F. The intent was to reduce the amount of time needed to conduct the road tests by reducing the amount of time that brakes would need to cool between stops. In general, comments on the proposed increased temperature range stated that the increased temperatures would necessitate design changes in the braking system by requiring more aggressive linings, and that this increased initial temperature range would not be consistent with testing that had been conducted in the past using the lower initial temperature range. These negative aspects of the proposed temperature range outweighed the small benefits in reduced testing time, so we retained the 150 to 200 degree initial brake temperature criteria. For those reasons, we believe that this initial temperature range is also appropriate for testing of single-unit trucks and buses for the braking-in-a-curve test.

L. Transmission Position

NHTSA proposes that the braking-in-a-curve test for single-unit trucks and buses be conducted either with the vehicle's transmission placed in a neutral position or with the clutch pedal depressed. This technique minimizes the effects of engine and driveline retardation, which is necessary in order to solely evaluate the performance of the braking system without undue driveline influences. Although the effects of engine and driveline retardation can affect the stability of medium and heavy vehicles when operated on low coefficient of friction road surfaces, this is not the primary purpose of the braking-in-a-curve test. The proposed test condition also helps to ensure test repeatability and reproducibility.

M. Test Sequence

NHTSA proposes that the braking-in-a-curve test for air-braked single-unit trucks and buses be conducted immediately after the burnish procedure as indicated in Table I of Standard No. 121, with the loaded tests followed by the unloaded tests. We further propose that the braking-in-a-curve test for hydraulic-braked single-unit trucks and buses be conducted immediately after the post-burnish brake adjustment in S7.4.2.2, with the loaded tests followed by the unloaded tests.

We originally selected this test sequence for air-braked tractors so that vehicle stability during the braking-in-a-curve test could be checked early in the test sequence. In the final rule of December 13, 1995, we amended the test sequence by placing both braking-in-a-curve tests immediately after the burnish for several reasons: (a) to allow test track wetting to be accomplished more efficiently; (b) to minimize ABS performance variability that might occur after tires are subjected to high-speed stopping distance tests on a high coefficient of friction surface; and (c) to minimize vehicle transfers for those manufacturers that use a different test site for ABS testing. The same sequence is being proposed in this notice. In addition, the loaded test is proposed to be conducted prior to the unloaded test, since the vehicle would already be fully-loaded immediately following the brake burnish.

N. Special Drive Considerations

We propose that single-unit trucks and buses being tested in the braking-in-a-curve test under Standard No. 105 be subjected to the same road test provisions as are currently specified for trucks and buses in subsection S6.1 of Standard No. 121.

Paragraph S6.1.11 specifies that vehicles with interlocking axles or front wheel drive systems which are engaged and disengaged by the driver be tested with such systems disengaged. As in the case of the transmission, the driveline effects of a front wheel drive or interaxle locking system on the performance of the vehicle in the braking-in-a-curve test should be minimized to the extent possible. Since the road test conditions in Standard No. 105 do not include this provision, we propose the same provision under Standard No. 105 as under Standard No. 121. We invite comments on this issue.

IV. Intermediate and Final Stage Manufacturers

In the NPRM of September 28, 1993 and the stability and control final rule of March 10, 1995, we discussed the issue of certification to Standard Nos. 105 and 121 for vehicles manufactured in two or more stages. One concern was that final stage manufacturers would not be able to conduct the road testing for each type of vehicle they manufacture. We stated that in many cases the incomplete vehicle manufacturer could pass through certification to the final stage manufacturer if the final stage manufacturer adhered to specifications provided by the incomplete vehicle manufacturer, for example, by not exceeding the GAWRs, not altering any brake component, and keeping the center of gravity of the completed vehicle within a specified envelope.

In cases for which pass-through certification was not available, such as vehicles built in one stage, the manufacturer could use engineering analysis, actual testing, or computer simulations to certify their vehicles. Moreover, a manufacturer need not conduct such testing or analysis itself, but could base its certification on the services of independent engineers and testing laboratories, or could join together through trade associations to sponsor testing or analysis. Finally, manufacturers could rely on testing and analysis by third parties, such as brake manufacturers, who typically perform extensive analyses and tests of their products. Based on these various options available to vehicle manufacturers, we do not believe that the proposed performance requirements pose any significant certification burdens for final stage manufacturers or other small manufacturers.

Another concern was that the pass-through certification from an incomplete vehicle manufacturer could have design limitations that are so design restrictive that final stage manufacturers would not be able to readily adhere to them. As stated above, however, the testing at VRTC showed that varying the load height on the trucks being tested did not have an appreciable effect on the results of the braking-in-a-curve test. Therefore, based on the testing performed to date, we are not aware of any significant additional requirements that would be necessary as a result of implementing the braking-in-a-curve test for single-unit trucks and buses that would result in the pass-through certification becoming unduly restrictive for final stage manufacturers.

V. Benefits

NHTSA published a detailed estimate of the costs and benefits of equipping medium and heavy vehicles with ABS in the February 1995 Final Economic Assessment (FEA) (see footnote 1 above). This FEA provided estimates for the reduction in fatal, injury-producing, and property-damage-only (PDO) crashes by equipping medium and heavy vehicles with ABS and implementing/reimplementing straight line stopping distance requirements. It also provided a detailed analysis of the projected costs to consumers and vehicle manufacturers to meet the ABS requirements. The projected annual benefits of ABS were summarized for all medium and heavy vehicles as follows:

1. 29,103 crashes prevented per year.
2. 38,227 fewer vehicle involvements in PDO crashes.

3. 15,900 to 27,413 vehicle occupant injuries prevented per year.

4. 320 to 506 vehicle occupant fatalities prevented per year.

5. $457,780,795 to $552,769,946 of property damage prevented.

Table 6 on page V–12 of the FEA provides a breakdown of the estimated benefits of ABS for each vehicle type including combination vehicles, bobtail tractors, single-unit trucks, and buses. That table also shows the reduced fatalities, injuries, and PDO crash damage to other vehicles involved in crashes with these medium and heavy vehicles. The breakdown did not differentiate between single-unit trucks and buses equipped with air versus hydraulic braking systems. In general, the table indicates that for single-unit trucks and buses equipped with ABS, between 16 and 34 truck and bus occupant fatalities will be prevented each year, and between 79 and 117 fatalities among occupants of other vehicles will be prevented each year.

The potential benefits of applying the braking-in-a-curve performance test to single-unit trucks and buses, compared with the benefits of solely requiring the ABS equipment portions in the respective safety standards, were not differentiated in the FEA nor for the purposes of this rulemaking action. The full benefits projected in the FEA are based on having both the equipment requirements and performance tests to ensure that ABS installed on medium and heavy vehicles performs with a maximum level of safety. The benefits projected in the FEA reflect the installation of antilock brake systems that were in use and on the road at the time of the analysis. We have since conducted ABS braking-in-a-curve tests, on six single-unit vehicles—four straight trucks and two buses—that are now required to have ABS installed. All these vehicles passed the performance requirements with a large margin of compliance. While we project no additional benefits by requiring these performance tests, they will help assure that minimum levels of safety are maintained.

VI. Costs

In the February 1995 FEA, NHTSA provided an extensive evaluation of the estimated costs to vehicle manufacturers and consumers associated with requiring ABS on medium and heavy vehicles. The majority of costs to consumers were the increased purchase price of vehicles equipped with ABS, in-service costs to perform maintenance and repairs to the ABS, and lost revenue and increased fuel consumption due to the extra weight of the ABS equipment. The FEA also included the costs to vehicle manufacturers to comply with the ABS requirements and the stopping distance requirements in the companion final rule. Although specific costs were not identified for conducting the braking-in-a-curve test for tractors, the costs to vehicle manufacturers (excluding the cost for the ABS equipment which would be passed on to the consumer) for all medium and heavy vehicles to comply with the new stopping distance requirements were estimated as follows:

Air-braked vehicles—Total cost of $11.71 million, including $6.0 million for compliance testing costs and $5.71 million related to vehicle modifications necessary to improve vehicle stopping distance performance. For the estimated 208,500 air-braked vehicles produced each year, the total estimated cost per vehicle for the first year after the final rules was $56. For the remaining years after the first year, the estimated cost per vehicle was $37.

Hydraulic-braked vehicles—Total cost of $1.0 million, all for compliance testing. During the first year after the final rules, an estimated 194,400 vehicles would be affected for a cost per vehicle estimated at $5. In the years following the first year, the cost per vehicle was estimated at $2 per vehicle.

The first-year costs are higher because the additional road test requirements imposed by the control and stability final rule and the stopping distance final rule would require compliance testing of all affected vehicles that are already in production, while in the later years, only new vehicle designs or vehicles with modifications to their braking systems would need to be tested. Complete compliance tests for both hydraulic-and air-braked vehicles were estimated to cost $5,000 per vehicle per test.

NHTSA provides the following estimates for the cost of implementing the braking-in-a-curve test for single-unit trucks and buses. A stand-alone braking-in-a-curve test is estimated to cost $1500, and the incremental cost to incorporate the braking-in-a-curve test into a complete Standard No. 105 or 121 compliance test is estimated at $1,000.

For air-braked single-unit vehicles: As shown in Table 13 of the FEA, an estimated 53,900 single-unit trucks and 7,000 buses would be affected annually. For all air-braked vehicles, including tractors, the FEA estimated that twelve medium and heavy vehicle manufacturers would need to conduct 100 compliance tests each, for a total of 1200 compliance tests. If only single-unit trucks and buses are to be tested, there are fewer numbers of these vehicles produced compared to tractors, but there are more vehicle types that would need to be tested. We estimated, therefore, that the twelve manufacturers would need to conduct 60 compliance tests each, for a total of 720 tests, in the first year that the braking-in-a-curve test would become effective, at a cost of $1,080,00 (720 × $1,500). This assumes that compliance testing for the stopping distance requirements would have already been conducted. The cost per air-braked vehicle is estimated to be about $18 ($1,080,000 ÷ 60,900). In the later years, it is estimated that 30 compliance tests would be required annually, for a total cost of $360,000 (12 × 30 × $1,000). The cost per air-braked vehicle in the later years would be about $6 ($360,000 ÷ 60,900).

Hydraulic-braked single-unit vehicles: As shown in Table 13 of the FEA, an estimated 194,400 single-unit vehicles would be affected annually. Assuming that the timing of the braking-in-a-curve test is such that all of the affected vehicles would have this test requirement included in a complete compliance test to all of the requirements in Standard No. 105, the $1,000 per test cost is used. The estimates in the FEA were that 10 vehicle manufacturers would need to conduct 20 compliance tests each, for a total of 200 compliance tests, at an annual cost of $200,000 (200 × $1,000). The cost per vehicle is then estimated at about $1 ($200,000 ÷ 194,400). This cost per vehicle would be the same in the later years.

Implementing the braking-in-a-curve performance test for single-unit vehicles with either hydraulic or air brakes is not expected to result in any increases in vehicle equipment or manufacturing costs, since these vehicles are already required to be equipped with ABS. As long as the antilock braking systems that are being installed on affected vehicles perform as they are supposed to, that is, preventing wheel lockup under a variety of road and load conditions, then these vehicles should be able to comply with the braking-in-a-curve test without additional development or equipment costs to the vehicle manufacturer. Thus all costs associated with requiring the braking-in-a-curve test are limited to the cost of vehicle manufacturers performing road tests and do not include equipment costs.

VII. Compliance Date

NHTSA proposes that the compliance date for the braking-in-a-curve test requirements, for both air and hydraulic-braked single unit trucks and buses, be two years after publication of the final rule in the **Federal Register**. Due to the operating conditions of these trucks, which often call for specialized designs, manufacturers produce a large

number of different truck configurations. The proposal would provide sufficient leadtime to ensure that the manufacturers can test a relatively large number of vehicle types and configurations. At the same time, it would also ensure that this important check of vehicle stability is implemented in a timely manner to ensure the safe operation of these vehicles. Optional early compliance would be permitted on and after the date of publication of the final rule in the **Federal Register**.

VIII. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This document has not been reviewed under Executive Order 12866, *Regulatory Planning and Review.*

We have analyzed the impact of this rulemaking and have determined that it is not ''significant'' within the meaning of DOT's regulatory policies and procedures. This action proposes to amend the air and hydraulic brake standards applicable to medium and heavy vehicles to provide for a braking-in-a-curve test for single-unit trucks and buses to enhance the stability and control of those vehicles. As discussed in Section VII above, we estimate that the total cost of the braking-in-a-curve test for manufacturers of single-unit vehicles equipped with air brakes would be approximately $1,080,000 the first year, for a per-vehicle cost about $18. In the later years, we estimate that the per-vehicle cost would be approximately $6, for a total cost of about $360,000. For hydraulic-braked single-unit vehicles, we estimate the annual cost to manufacturers of the braking-in-a-curve test to be about $200,000, for a per-vehicle cost of about $1. We estimate that this cost would be the same in the later years.

As discussed above, NHTSA evaluated in detail the costs and benefits of equipping medium and heavy vehicles with ABS. We believe that the full array of costs and benefits discussed in the FEA will not be fully attained until 10 years or more since it will take that long until all existing non-ABS medium and heavy vehicles have been replaced by newer vehicles equipped with ABS. Accordingly, we believe that the projected figures in the FEA are still valid and on that basis, we have concluded that preparation of another full regulatory evaluation is not warranted.

B. Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* I hereby certify that this notice of proposed rulemaking would not have a significant impact on a substantial number of small entities.

The following is our statement providing the factual basis for this certification (5 U.S.C. 605(b)). The amendments proposed in this action would primarily affect manufacturers of medium and heavy vehicles, including single-unit trucks and buses. The Small Business Administration (SBA) regulation at 13 CFR part 121 defines a small business as a business entity that operates primarily within the United States (13 CFR 121.105(a)).

SBA's size standards are organized according to Standard Industrial Classification (SIC) codes. SIC code No. 3711, *Motor Vehicles and Passenger Car Bodies,* prescribes a small business size standard of 1,000 or fewer employees. SIC code No. 3714, *Motor Vehicle Parts and Accessories,* prescribes a small business size standard of 750 or fewer employees.

The amendments proposed in this rulemaking add an additional test procedure to the air and hydraulic brake standards, applicable only to medium and heavy single-unit trucks and buses. These amendments do not apply to trailers. The amendments, if adopted, would impose minimal testing costs to manufacturers of the affected vehicles, most if not all of which would not qualify as small businesses under SBA guidelines. We estimate that the proposed amendments, if adopted, would result in minimal, if any, additional costs to small businesses or consumers. Accordingly, there would be no significant impact on small businesses, small organizations, or small units by these amendments. For those reasons, the agency has not prepared a preliminary regulatory flexibility analysis.

C. Executive Order No. 12612, Federalism

NHTSA has analyzed this rulemaking action in accordance with the principles of E.O. 12612 and has determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

D. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act and has determined that implementation of this rulemaking action would not have any significant impact on the quality of the human environment.

E. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, Pub L. 96–511, NHTSA states that there are no information collection requirements associated with this rulemaking action.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This proposed rule does not meet the definition of a Federal mandate because, if adopted, annual expenditures by the stated entities will not exceed the $100 million threshold.

G. Civil Justice Reform

The amendments proposed in this rulemaking action would not have any retroactive effect. Under 49 U.S.C. 30103(b), whenever a Federal motor vehicle safety standard is in effect, a state or political subdivision of a state may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle only if that standard is identical to the Federal standard. However, the United States government, a state or political subdivision of a state may prescribe a standard for a motor vehicle or motor vehicle equipment obtained for its own use that imposes a higher performance requirement than that required by the Federal standard. Section 30161 of Title 49, U.S. Code sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. A petition for reconsideration or other administrative proceeding is not required before parties may file suit in court.

IX. Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

- Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/).*
- On that page, click on ''search.''
- On the next page (http://dms.dot.gov/search/), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''
- On the next page, which contains docket summary information for the docket you selected, click on the desired comments.
- You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the downloaded comments are not word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 571 would be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.105 would be amended by adding definitions of ''Full brake application'' and ''Maximum drive-through speed'' to S4; by revising S5.1, S6.9.2 the introductory text of S7, S7.5, and Table I; and by adding S5.1.7 and S6.14, to read as follows:

§ 571.105 Standard No. 1059, Hydraulic brake and electric systems.

* * * * *

S4 *Definitions.*

* * * * *

Full brake application means a brake application in which the force on the brake pedal reaches 150 pounds within 0.2 seconds from the point of application of force to the brake control.

* * * * *

Maximum drive-through speed means the highest possible constant speed at which the vehicle can be driven through 200 feet of a 500-foot radius curve arc without leaving the 12-foot lane.

* * * * *

S5.1 *Service brake systems.* Each vehicle must be equipped with a service brake system acting on all wheels. Wear of the service brake must be compensated for by means of a system of automatic adjustment. Each passenger car and each multipurpose passenger vehicle, truck, and bus with a GVWR of 10,000 pounds or less must be capable of meeting the requirements of S5.1.1 through S5.1.6 under the conditions prescribed in S6, when tested according to the procedures and in the sequence set forth in S7. Each school bus with a GVWR greater than 10,000 pounds must be capable of meeting the requirements of S5.1.1 through S5.1.5, and S5.1.7 under the conditions specified in S6, when tested according to the procedures and in the sequence set forth in S7. Each multipurpose passenger vehicle, truck and bus (other than a school bus) with a GVWR greater than 10,000 pounds must be capable of meeting the requirements of S5.1.1, S5.1.2, S5.1.3, and S5.1.7 under the conditions specified in S6, when tested according to the procedures and in the sequence set forth in S7. Except as noted in S5.1.1.2 and S5.1.1.4, if a vehicle is incapable of attaining a speed specified in S5.1.1, S5.1.2, S5.1.3, or S5.1.6, its service brakes must be capable of stopping the vehicle from the multiple of 5 mph that is 4 to 8 mph less than the speed attainable in 2 miles, within distances that do not exceed the corresponding distances specified in Table II. If a vehicle is incapable of attaining a speed specified in S5.1.4 in the time or distance interval set forth, it must be tested at the highest speed attainable in the time or distance interval specified.

* * * * *

S5.1.7 *Stability and control during braking.* When stopped four consecutive times under the conditions specified in S6, each vehicle with a GVWR greater than 10,000 pounds and manufactured on or after (COMPLIANCE DATE, if adopted) must stop from 30 mph or 75 percent of the maximum drive-through speed, whichever is less, at least three times within the 12-foot lane, without any part of the vehicle leaving the roadway. Stop the vehicle with the vehicle:

(a) Loaded to its GVWR, and

(b) At its unloaded weight, plus up to 500 pounds (including driver and instrumentation), or at the manufacturer's option, at its unloaded weight plus up to 500 pounds (including driver and instrumentation)

and plus not more than an additional 1000 pounds for a roll bar structure on the vehicle.

* * * * *

S6.9.2 (a) For vehicles with GVWRs greater than 10,000 pounds, road tests are conducted on a 12-foot-wide, level roadway, having a peak friction coefficient of 0.9 when measured using an American Society for Testing and Materials (ASTM) E 1136 standard reference test tire, in accordance with ASTM Method E 1337–90, at a speed of 40 mph, without water delivery. Burnish stops are conducted on any surface. The parking brake test surface is clean, dry, smooth, Portland cement concrete.

(b) For vehicles with GVWRs greater than 10,000 pounds, stability and control during braking tests are conducted on a 500-foot-radius curved roadway with a wet level surface having a peak friction coefficient of 0.5 when measured on a straight or curved section of the curved roadway using an American Society for Testing and Materials (ASTM) E1136 standard reference tire, in accordance with ASTM Method E1337–90, at a speed of 40 mph, with water delivery.

* * * * *

S6.14 *Special drive conditions.* A vehicle with a GVWR greater than 10,000 pounds equipped with an interlocking axle system or a front wheel drive system that is engaged and disengaged by the driver is tested with the system disengaged.

* * * * *

S7. *Test procedure and sequence.* Each vehicle must be capable of meeting all the applicable requirements of S5 when tested according to the procedures and in sequence set forth below, without replacing any brake system part or making any adjustments to the brake system other than as permitted in the burnish and reburnish procedures and in S7.9 and S7.10. For vehicles only having to meet the requirements of S5.1.1, S5.1.2, S5.1.3, and S5.1.7 in section S5.1, the applicable test procedures and sequence are S7.1, S7.2, S7.4, S7.5, S7.9, S7.10, S7.11 and S7.18. However, at the option of the manufacturer, the following test procedure and sequence may be conducted: S7.1, S7.2, S7.3, S7.4, S7.5, S7.6, S7.7, S7.8, S7.9, S7.10, S7.11, and S7.18. The choice of this option must not be construed as adding to the requirements specified in S5.1.2 and S5.1.3. Automatic adjusters must remain activated at all times. A vehicle shall be deemed to comply with the stopping distance requirements of S5.1 if at least one of the stops at each speed and load specified in each of S7.3, S7.5, S7.8, S7.9, S7.10, S7.15 and S7.17 (check stops) is made within a stopping distance that does not exceed the corresponding distance specified in Table II. When the transmission selector is required to be in neutral for a deceleration, a stop or snub must be obtained by the following procedures:

(a) Exceed the test speed by 4 to 8 mph;

(b) Close the throttle and coast in gear to approximately 2 mph above the test speed;

(c) Shift to neutral; and

(d) When the test speed is reached, apply the service brakes.

* * * * *

S7.5 (a) *Stability and control during braking* (vehicles with GVWRs greater than 10,000 pounds). Make four stops in the loaded condition specified in S5.1.7(a) and then four stops in the unloaded condition specified in S5.1.7(b). Use a full brake application for the duration of the stop, with the clutch pedal depressed or the transmission selector control in the neutral position, for the duration of each stop.

(b) *Service brake system—second effectiveness test.* Repeat S7.3. Then (for passenger cars and other vehicles with GVWRs of 10,000 pounds or less) make four stops from 80 mph if the speed attainable in 2 miles is not less than 84 mph.

* * * * *

TABLE I—BRAKE TEST PROCEDURE SEQUENCE AND REQUIREMENTS

Sequence	Test load		Test procedure	Requirements
	Light	GVWR		
1. Instrumentation check			S7.2	
2. First (preburnish) effectiveness test		X	S7.3	S5.1.1.1
3. Burnish procedure		X	S7.4	
4. Braking-in-a-curve test	X	X	S7.5(a)	S5.1.7
5. Second effectiveness test		X	S7.5(b)	S5.1.1.2
6. First reburnish		X	S7.6	
7. Parking brake	X	X	S7.7	S5.2
8. Third effectiveness (lightly loaded vehicle)	X		S7.8	S5.1.1.3
9. Partial failure	X	X	S7.9	S5.1.2
10. Inoperative brake power and power assist units		X	S7.10	S5.1.3
11. First fade and recovery		X	S7.11	S5.1.4
12. Second reburnish		X	S7.12	
13. Second fade and recovery		X	S7.13	S5.1.4
14. Third reburnish		X	S7.14	
15. Fourth effectiveness		X	S7.15	S5.1.1.4
16. Water recovery		X	S7.16	S5.1.5
17. Spike stops		X	S7.17	S5.1.6
18. Final inspection			S7.18	S5.6
19. Moving barrier test		X	S7.19	S5.2.2.3

* * * * *

3. Section 571.121 would be amended by revising S5.3, S5.3.6, S5.3.6.2 introductory text and paragraph (a), S6.1.15, and Table I to read as follows:

§ 571.121 Standard No. 121; Air brake systems.

* * * * *

S5.3 *Service brakes—road tests.* The service brake system on each truck tractor must, under the conditions of S6, meet the requirements of S5.3.1, S5.3.3, S5.3.4, and S5.3.6, when tested without adjustments other than those specified in this standard. The service brake system on each bus and truck other than a truck tractor must, under the conditions of S6, meet the requirements

of S5.3.1, S5.3.3, and S5.3.4 when tested without adjustments other than those specified in this standard. The service brake system on each bus and truck other than a truck tractor manufactured on or after [Compliance date to be inserted] must, under the conditions of S6, meet the requirements of S5.3.1, S5.3.3, S5.3.4, and S5.3.6, when tested without adjustments other than those specified in this standard. The service brake system on each trailer must, under the conditions of S6, meet the requirements of S5.3.3, S5.3.4, and S5.3.5 when tested without adjustments other than those specified in this standard. However, a heavy hauler trailer and the truck and trailer portions of an auto transporter need not meet the requirements of S5.3.

* * * * *

S5.3.6 *Stability and control during braking—trucks and buses.* When stopped four consecutive times for each combination of weight, speed, and road conditions specified in S5.3.6.1 and S5.3.6.2, each truck tractor must stop at least three times within the 12-foot lane, without any part of the vehicle leaving the roadway. When stopped four consecutive times for each combination of weight, speed, and road conditions specified in S5.3.6.1 and S5.3.6.2, each bus and truck other than a truck tractor manufactured on or after [Compliance date to be inserted], must stop at least three times within the 12-foot lane, without any part of the vehicle leaving the roadway.

* * * * *

S5.3.6.2 Stop the vehicle, with the vehicle:

(a) Loaded to its GVWR so that the load on each axle measured at the tire-ground interface is most nearly proportional to the axles' respective GAWRs, without exceeding the GAWR of any axle, and

(b) * * *

* * * * *

S6.1.15 *Initial brake temperature.* Unless otherwise specified, the initial brake temperature is not less than 150°F and not more than 200°F. The temperature of each brake is measured by a single plug-type thermocouple installed in the center of the lining surface of the most heavily loaded shoe or pad as shown in Figure 2. The thermocouple is outside any center groove.

* * * * *

TABLE I—STOPPING SEQUENCE

1. Burnish.

2. Stops on a peak friction coefficient surface of 0.5:

(a) With the vehicle at gross vehicle weight rating (GVWR), stop the vehicle from 30 mph using the service brake, for a single-unit vehicle or for a truck tractor with a loaded unbraked control trailer;

(b) With the vehicle at unloaded weight plus up to 1,500 lbs, stop the vehicle from 30 mph using the service brake, for a truck tractor or a single-unit vehicle;

3. Manual adjustment of the service brakes allowed for truck tractors and single-unit vehicles within the limits recommended by the vehicle manufacturer.

4. Other stops with vehicle at GVWR:

(a) 60 mph service brake stops on a peak friction coefficient surface of 0.9, for a truck tractor with a loaded unbraked control trailer, or for a single-unit vehicle;

(b) 60 mph emergency brake stops on a peak friction coefficient of 0.9, for a single-unit vehicle. Truck tractors are not required to be tested in the loaded condition.

5. Parking brake test with the vehicle loaded to GVWR.

6. Manual adjustment of the service brakes allowed for truck tractors and single-unit vehicles, within the limits recommended by the vehicle manufacturer.

7. Other stops with the vehicle at unloaded weight plus up to 1500 lbs:

(a) 60 mph service brake stops on a peak friction coefficient surface of 0.9, for a truck tractor or for a single-unit vehicle;

(b) 60 mph emergency brake stops on a peak friction coefficient of 0.9, for a truck tractor or for a single-unit vehicle.

8. Parking brake test with the vehicle at unloaded weight plus up to 500 lbs.

9. Final inspection of service brake system for condition of adjustment.

* * * * *

Issued on December 14, 1999.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 99–32889 Filed 12–20–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 991112303–9303–01; I.D. 100499A]

RIN 0648–AM01

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; 1999–2000 Catch Specifications for Gulf Group King and Spanish Mackerel

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

ACTION: Proposed rule; request for comments.

SUMMARY: In accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP), NMFS proposes to increase the total allowable catch (TAC) and the bag limit for Gulf group Spanish mackerel and to establish a new fishing season for the Gulf group king mackerel gillnet fishery. The intended effects of this rule are to enhance the economic and social benefits from the Gulf group king and Spanish mackerel fisheries while maintaining healthy stocks.

DATES: Written comments must be received at the appropriate address or fax number, (see **ADDRESSES**), no later than 5:00 p.m., eastern standard time, on January 20, 2000.

ADDRESSES: Written comments on the proposed rule must be sent to Steve Branstetter, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or Internet.

Requests for copies of the environmental assessment and regulatory impact review (RIR) supporting this action should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway North, Suite 1000, Tampa, FL, 33619–2266, PHONE: 813–228–2815, FAX: 813-225-7015.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, 727–570–5305.

SUPPLEMENTARY INFORMATION: The fisheries for coastal migratory pelagic resources are regulated under the FMP. The FMP was prepared jointly by the

Gulf of Mexico and South Atlantic Fishery Management Councils and was approved by NMFS and implemented by regulations at 50 CFR part 622.

In accordance with the framework procedures of the FMP, the Gulf of Mexico Fishery Management Council (Council) made recommendations for changes in certain management measures, in a regulatory amendment for 1999–2000 catch specifications, to the Regional Administrator, Southeast Region, NMFS (RA). The recommended changes are within the scope of the management measures that may be adjusted under the framework procedure, as specified in 50 CFR 622.48.

Bag Limit for Captain and Crew of For-Hire Vessels

NMFS recently published a final rule (64 FR 45457, August 20, 1999) establishing a zero-fish bag limit of Gulf group king mackerel for captain and crew of for-hire vessels (i.e., charter vessels and headboats). In the 1999/2000 catch specifications that this rule proposes to implement, the Council proposes to restore the 2–fish-per-person-per-day bag limit for this segment of the fishery, concluding that the management goals to rebuild this stock can be achieved without this restriction. Nevertheless, NMFS continues to believe that a zero-fish bag limit of Gulf group king mackerel for the captain and crew of for-hire vessels is necessary for the adequate conservation and management of this overfished resource. The rationale for its belief is set forth in the preamble to the final rule (64 FR 45457, August 20, 1999) to implement the 1998/1999 catch specifications. Two independent sampling programs indicate that on a per-trip basis the per-angler catch exceeds the allowable bag limit unless the captain and crew are included as anglers. The recreational fishery has consistently overrun its allocation since the 1986/87 fishing year, and the catch attributable to the captain and crew contributes to this problem. NMFS anticipates that a zero-fish bag limit for captains and crew will reduce total charterboat landings by as much as 17 percent. Fifty to sixty-five percent of the total recreational landings are from charterboats, thus the total reduction in recreational catch could be as high as 10–12 percent. Additionally, enforcement of a daily bag limit for captain and crew of for-hire vessels is difficult where those vessels and crews make multiple trips within a day. NMFS also believes that a 0–fish bag limit for Gulf group king mackerel for captain and crew on for-hire vessels will reduce in-season recreational sales, which are then counted against the commercial quota. This leads to situations where the fish are counted twice: once as a recreational catch, and once as a commercial sale. This double counting of fish contributes to an ''artificial'' overrun of the commercial quotas. Elimination of this double counting should foster a more accurate depiction of fishing mortality, thus providing more accurate stock assessments. For these reasons, the RA has determined that the Council's proposed reinstatement of the 2–fish bag limit on Gulf group king mackerel for the captain and crew of for-hire vessels is contrary to the goals and objectives of the FMP and to the requirements of the Magnuson-Stevens Fishery Conservation and Management Act. Consistent with the FMP framework provisions, the proposed 2–fish bag limit for this fishery is not proposed in this rule. The RA has notified the Council of his action and reasons therefore.

Fishing Season Changes for the Gillnet Fishery

The Council recommends the establishment of a new opening date for the gillnet fishery for Gulf group king mackerel of 6:00 a.m. eastern standard time on the Tuesday following the Martin Luther King, Jr. holiday, with the following weekend open as long as the quota has not been taken. All subsequent weekends and holidays would be closed. Weekend and holiday closures, would be from 6:00 a.m. Saturday to 6:00 a.m. Monday eastern standard time (or Tuesday if Monday is a holiday). During these closures, a person aboard a vessel using or possessing a gillnet with a stretched-mesh size of 4.75 inches (12.1 cm) or larger in the Florida west coast subzone would not be able to fish for or possess Gulf group king mackerel.

The Council proposes this new fishing season because the gillnet fishery has the capability of harvesting large amounts of king mackerel in a short timeframe; thus it is imperative to be able to implement a closure on short notice. The fishery in southern Florida normally is conducted during the month of January. By delaying the opening of the season until after the 3-day weekend associated with the Martin Luther King holiday and by closing all weekends after the first weekend to gillnet fishing, the Council intends to reduce the possibility of the fishery exceeding its allocation because fishing is occurring during a period when a closure notice cannot be published.

Increase TAC for Spanish Mackerel

The Council recommends an increase in the TAC for Gulf group Spanish mackerel from 7.0 to 9.1 million lb (3.2 to 4.1 million kg). This TAC would be at the lower end of the acceptable biological catch range of 9.1 to 17.2 million lb (4.1 to 7.8 million kg), and within the confidence intervals established (7.1 to 9.7 million lb (3.2 to 4.4 million kg)) for maximum sustainable yield. Landings in this fishery have been below the established TAC since the 1989/1990 fishing season. Since the 1995/1996 fishing year, landings have averaged about 2.5 million lb (1.1 million kg) while TAC remained at 7.0 million lb (3.2 million kg). The stock is not overfished or undergoing overfishing, and the Council intends to enhance the social and economic benefits from the fishery by providing optimal utilization of this resource. A 9.1 million-lb (4.1 million-kg) TAC would provide a 3.913 million-lb (1.775 million-kg) allocation to recreational fishing and a 5.187 million-lb (2.353 million-kg) allocation to commercial fishing.

Increase the Recreational Bag Limit for Spanish Mackerel

The Council proposes to increase the bag limit for Gulf group Spanish mackerel from 7 fish off Texas and 10 fish for all other states to 15 fish per person per day for the entire exclusive economic zone (EEZ) in the Gulf (Florida through Texas) with the change to be effective January 1, 2000. The recreational fishery has not met its allocation in recent years under the more restrictive bag limits. Thus, based on the healthy status of the stock and the proposed increase in TAC, the Council intends to provide greater social and economic benefits from the optimal utilization of this resource.

Classification

This proposed rule has been determined to be significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This certification is based largely on the findings in the RIR. The factual basis for the certification is summarized as follows:

Based on Small Business Administration definitions found in Section 601(3) of the Regulatory

Flexibility Act, there are 1,440 small business entities permitted for commercial coastal migratory pelagics fishing, and an additional 1,113 for-hire (charterboat and headboat) small business entities have permits. A majority of the commercial small business entities will receive insignificant positive benefits from the actions. The actions will not affect significantly for-hire small businesses. The only action affecting commercial revenues is the proposal to change the start date for the gillnet fishery. This change is expected to result in a slight increase in exvessel prices because the commercial catches will be spread more evenly over the year. None of the proposed actions would lead to increased compliance costs, so there are no differential small versus large entity impacts. In addition, there are no expected capital costs of compliance, and there are no additional requirements for bookkeeping or record keeping. Since the expected economic impacts are small and positive, there is no expectation that any of the small business entities comprising the universe will cease business if the actions are implemented.

As a result, a regulatory flexibility analysis was not prepared. Copies of the RIR are available (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: December 15, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.34, paragraph (m) is added to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(m) *Closures of the Gulf group king mackerel gillnet fishery*. The gillnet fishery for Gulf group king mackerel in or from the EEZ is closed each fishing year from July 1 until 6:00 a.m. on the day after the Martin Luther King Jr. Federal holiday, which is the third Monday in January. The gillnet fishery also is closed during all subsequent weekends and observed Federal holidays, except for the first weekend following the Martin Luther King Jr. holiday which will remain open to the gillnet fishery provided a notification of closure of that fishery has not been filed under § 622.43(a). Weekend closures are effective from 6:00 a.m. Saturday to 6:00 a.m. Monday. Holiday closures are effective from 6:00 a.m. on the observed Federal holiday to 6:00 a.m. the following day. All times are eastern standard time. During these closures, a person aboard a vessel using or possessing a gillnet with a stretched-mesh size of 4.75 inches (12.1 cm) or larger in the Florida west coast subzone may not fish for or possess Gulf group king mackerel.

3.In § 622.39, paragraph (c)(1)(iv) is revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(c) * * *

(1) * * *

(iv) Gulf migratory group Spanish mackerel—15.

* * * * *

4. In § 622.42, paragraph (c)(2)(i) is revised to read as follows:

§ 622.42 Quotas.

* * * * *

(c) * * *

(2) * * *

(i) *Gulf migratory group*. The quota for the Gulf migratory group of Spanish mackerel is 5.187 million lb (2.353 million kg).

* * * * *

5. In § 622.44, paragraph (a)(2)(ii)(A)(*1*) is revised to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(a) * * *

(2) * * *

(ii) * * *

(A) * * *

(*1*) In the Florida west coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit with a gillnet endorsement has been issued, as required under § 622.4(a)(2)(ii), in amounts not exceeding 25,000 lb (11,340 kg) per day, provided the gillnet fishery for Gulf group king mackerel is not closed under § 622.34(m) or § 622.43(a).

* * * * *

[FR Doc. 99–32923 Filed 12-20-99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991210329–9329–01; I.D. 102699B]

RIN 0648–AM63

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Area; Amendment 58 to Revise the Chinook Salmon Savings Areas

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 58 to the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (BSAI) (FMP) and associated recommendations from the North Pacific Fishery Management Council (Council). Amendment 58 would establish a framework to allow NMFS to reduce the annual trawl bycatch limit for chinook salmon and it would revise the Chinook Salmon Savings Area (CHSSA) in the BSAI. This action is necessary to reduce chinook salmon bycatch and is intended to further the conservation and management objectives of the FMP.

DATES: Comments on the proposed rule must be received no later than February 4, 2000.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. NMFS will not accept comments submitted by e-mail or the Internet. Copies of Amendment 58 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from the same address or by calling the Alaska Region, NMFS, at 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Shane Capron, 907–586–7228 or shane.capron@noaa.gov

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the BSAI under the FMP. Regulations appearing at 50 CFR part 679 issued under authority of the Magnuson-

Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) implement the FMP. General regulations governing U.S. fisheries appear at 50 CFR part 600. The Council prepared the FMP under authority of the Magnuson-Stevens Act. The Council prepared Amendment 58 to the FMP primarily to reduce bycatch of chinook salmon by trawl fisheries in the BSAI. NMFS published a notice of availability for this amendment in the **Federal Register** at 64 FR 60157 on November 4, 1999, soliciting public comments on this amendment through January 3, 2000. Public comments that are received on that request for comments or in response to this notice of proposed rulemaking on or before January 3, 2000, will be considered in the approval/disapproval decision. Comments received after that date, but before the end of the comment period for this proposed rule, will not be considered in the approval-disapproval decision of the amendment, but will be considered in context of this proposed rule. The preamble of the final rule will contain a summary of the comments received, both on Amendment 58 and on the proposed rule. Copies of Amendment 58 are available upon request (see **ADDRESSES**).

Background

Trawl fisheries in the BSAI, particularly the midwater pollock fishery, incidentally catch chinook salmon, which is why Amendment 58 removes the PSC limit. Salmon are prohibited species in the BSAI groundfish fisheries. They cannot be retained and must be returned to the sea as soon as possible with a minimum of injury after they have been counted by a NMFS certified observer. However, the mortality rate for salmon caught in trawl fisheries is 100 percent as salmon cannot survive interception by trawl gear. Final regulations published on November 29, 1995 (60 FR 61215), effective January 1996, established annual prohibited species catch (PSC) limits for chinook salmon and specific seasonal no trawling zones in the CHSSA that are triggered when the limits are reached. These existing regulations prohibit trawling in the CHSSA through April 15 of each year once the bycatch limit of 48,000 chinook salmon, as specified in the FMP, is reached.

Chinook salmon bycatch in trawl fisheries reached a high in 1980, when foreign trawl vessels intercepted approximately 115,000 chinook salmon. Following Federal action to reduce bycatch in the trawl fisheries, the foreign fleet was constrained by a bycatch reduction schedule that reduced the allowable level each year from 65,000 chinook salmon in 1981 to 16,500 chinook salmon in 1986. Domestic vessels began fishing in the mid-1980s and bycatch numbers remained below 40,000 fish until 1993. From 1994 to 1998, most of the chinook salmon bycatch was within the area designated as the CHSSA. During this same period, the bycatch limit of 48,000 chinook salmon was exceeded four times, with a high of about 60,000 chinook salmon intercepted in 1998. Since 1996, when the CHSSA became effective, a PSC limit of 48,000 chinook salmon has been in place between January 1 and April 15 for vessels using trawl gear, with no restrictions on the amount of chinook salmon bycatch in the subsequent months.

Concern over chinook salmon bycatch in the groundfish trawl fisheries exists because incidental harvests reduce the amount of chinook salmon available for escapement and subsistence in commercial and recreational fisheries. Between 50 and 90 percent of the chinook salmon bycatch in the BSAI is estimated to originate in Western Alaska river systems. Minimum escapement goals for the Yukon River, Kuskokwim River, and portions of Bristol Bay are being met through careful management of directed fisheries by time, area, and gear restrictions. In addition, chinook salmon is one of the major food items of Native communities in Western and Interior Alaska and plays an important role in supporting the indigenous cultures and mixed, subsistence-cash socioeconomic systems of these peoples. Finally, commercial and recreational chinook salmon fishing provides a primary source of income for Western Alaska communities.

The Magnuson-Stevens Act emphasizes the importance of minimizing bycatch in achieving sustainable fisheries. National standard 9 mandates that conservation and management measures, to the extent practicable, (1) minimize bycatch and (2) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch. In addition, section 303 of the Magnuson-Stevens Act was amended in 1996 to add bycatch reduction incentives as a discretionary provision of fishery management plans. This provision states that any fishery management plan may ''include, consistent with the other provisions of this Act, conservation and management measures that provide harvest incentives for participants within each gear group to employ fishing practices that result in lower levels of bycatch or in lower levels of the mortality of bycatch'' (section 303(b)(10)).

To comply with these provisions of the Magnuson-Stevens Act, the Council emphasized the need for additional bycatch management measures during the 1997 call for proposals to reduce bycatch and bycatch rates. At its meeting in September 1997, the Council initiated development of an analysis to investigate lowering the chinook salmon bycatch limit in the BSAI. This proposal, submitted by the Yukon River Drainage Fisheries Association, identified the current bycatch trigger of 48,000 chinook salmon as too high to reduce chinook salmon bycatch effectively. Additionally, bycatch of chinook salmon after April 15 does not apply toward the PSC limit that triggers a closure.

At its meeting in February 1999, the Council considered this information and the analysis prepared by its staff and by staff from the Alaska Department of Fish and Game in support of this action and adopted Amendment 58 to the BSAI FMP to reduce chinook salmon bycatch in the BSAI. The Council considered five alternatives and recommended the combination of FMP and regulatory amendments that would: (1) Reduce the chinook salmon bycatch limit from 48,000 to 29,000 chinook salmon over a 4-year period, (2) implement year-round accounting of chinook salmon bycatch for the pollock fishery, beginning on January 1 of each year, (3) revise the boundaries defined by the CHSSA, and (4) set new CHSSA closure dates.

Elements of the Proposed Rule

Chinook Salmon Savings Areas

Currently, the CHSSA encompasses three non-contiguous areas of the BSAI comprising nine geographic blocks, each defined by 1/2° latitude by 1° longitude. These blocks are closed to all vessels using trawl gear through 1200 hours Alaska local time (A.l.t.) April 15 once an annual PSC limit of 48,000 chinook salmon is reached. Monitoring of incidental catches in the trawl fisheries begins on January 1. If closed, the CHSSA reopens 1200 hours A.l.t. April 15 for the remainder of the year, regardless of the amount of chinook salmon bycatch.

Analysis of 1994–1997 observer data indicated that the current boundaries of the CHSSA could be modified slightly to incorporate new regions of relatively high chinook bycatch. High rates of bycatch were found in the vicinity of the Pribilof Islands. However, bycatch within specific areas and years was not found to be consistent. Alternatively, the two-block component of the current

CHSSA, in the Pribilof Islands, has had low bycatch rates of chinook salmon since its inception in 1996. Hence, these two blocks would be removed from the CHSSA. Additionally, the new area near Unimak Island, which showed consistently high bycatch rates of chinook salmon, would be included in the revised CHSSA.

Progressive Reduction of the Chinook Salmon Bycatch Limit

This action would prohibit directed fishing for pollock by vessels using trawl gear within the CHSSA when NMFS determines that the bycatch limit for chinook salmon has been attained for each year according to the following schedule:

Year	Chinook Salmon Limit
2000	41,000
2001	37,000
2002	33,000
2003 and after	29,000

Accounting for the PSC limit would begin on January 1 and continue throughout the fishing year. Non-pollock fisheries, which account for about 10 percent of the trawl chinook salmon bycatch, would be exempt from the closure of the CHSSA, and any chinook salmon bycatch in those fisheries would not be counted toward the PSC limit.

Historically, the Pacific cod trawl fishery is the only non-pollock fishery that intercepts a significant amount of chinook salmon. This fishery has accounted for a consistent amount of bycatch, ranging from 5,000 to 7,000 chinook salmon per year, while the pollock fishery bycatch of chinook salmon has ranged from approximately 40,000 to 60,000 chinook salmon per year. The Council recommended the exemption of the Pacific cod fishery because the Pacific cod fishery has exhibited consistent and relatively low bycatch of chinook salmon (about 10 percent of the annual bycatch). The pollock fishery has intercepted about 90 percent of the annual chinook salmon bycatch and has also shown greater flexibility in reducing its bycatch of chinook salmon by altering its fishing patterns. For these reasons, the Council determined that a PSC limit would be most effective if applied in a relative amount to the pollock fishery only. The Council assumed that a bycatch limit of 29,000 chinook salmon for the pollock fishery would be in addition to about 7,000 chinook salmon intercepted annually by the Pacific cod fishery (for a total of about 36,000 chinook salmon taken as bycatch).

In the event the chinook salmon limit is triggered before April 15, the CHSSA would close immediately. The closure would be removed on April 15 (before the beginning of the second pollock season), but would be reinitiated on September 1 and continue through the end of the year. If the limit were reached after April 15, but before September 1, then the CHSSA would close on September 1. The date, September 1, was selected because analysis indicates that bycatch increases in the fall. If the limit were reached after September 1, the CHSSA would close immediately and not reopen until the following year on January 1.

Classification

This action has been determined to be not significant under E.O. 12866.

NMFS has prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. A copy of this analysis is available from NMFS (see **ADDRESSES**).

The proposed action would apply to the 138 fishing vessels in the pollock fishery. In 1997, 34 factory trawlers and 106 catcher vessels participated in the pollock fishery harvesting about 1.15 million mt of pollock, an ex-vessel value of about $227 million. Under the proposed rule, if a chinook salmon PSC limit were attained, all vessels would be prohibited from directed fishing for pollock within the CHSSA, and the proposed regulations could affect all 138 vessels, including CDQ vessels. However, the available pollock TAC would not be reduced; only the location of the catch would be restricted. Therefore, this action should not prevent these vessels' ability to harvest the entire amount, although pollock catch rates could decrease as a direct result of a CHSSA closure. During the summer months when chinook salmon bycatch has been historically very low, the CHSSA would be open for directed fishing even if the PSC limit has been previously attained. NMFS is not aware of any Federal regulations that duplicate this proposed rule. No new reporting, recordkeeping, or compliance requirements are imposed by this rule. NMFS designed this rule to minimize impacts on small entities. The rule would specifically target the pollock fishery, which is composed primarily of large entities and which historically has been responsible for the vast majority of chinook salmon bycatch in the BSAI. All other fisheries in the BSAI, many of which have a higher number and percentage of small entity participation, are exempt from the chinook salmon PSC limit and any trawling prohibitions that might result from attainment of a PSC limit. Chinook salmon bycaught in non-pollock fisheries also would not be counted toward the cap under the preferred alternative, which reduces the potential for behavior of non-pollock fisheries to adversely impact (small) pollock operations. NMFS considered the alternative of maintaining the status quo. Although maintaining the status quo might minimize impacts on small entities, it would not achieve the objectives of this action.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 15, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, the definition for *Chinook Salmon Savings Area of the BSAI* is revised to read as follows:

* * * * *

Chinook Salmon Savings Area of the BSAI (see § 679.21(e)(7)(viii)).

* * * * *

3. In § 679.7, paragraph (d)(9) is revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(d) * * *

(9) For the operator of an eligible vessel listed on an approved CDP, use trawl gear to harvest pollock CDQ in the Chinook Salmon Savings Area between January 1 and April 15, and between September 1 and December 31, after the CDQ group's chinook salmon PSQ is attained.

* * * * *

4. In § 679.21, paragraphs (e)(1)(vii) and (e)(7)(viii) are revised to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(e) * * *

(1) * * *

(vii) *Chinook salmon*. The trawl closures identified in paragraph (e)(7)(viii) of this section will take effect

when the Regional Administrator determines that the PSC limit of chinook salmon caught while harvesting pollock in the BSAI between January 1 and December 31 is attained according to the following amounts identified for each year:

Year	Chinook Salmon Limit
2000	41,000
2001	37,000
2002	33,000
2003 and after	29,000

* * * * *

(7) * * *

(viii) *Chinook salmon*. (A) *Closure*. If, during the fishing year, the Regional Administrator determines that catch of chinook salmon, by vessels using trawl gear while directed fishing for pollock in the BSAI, will reach the annual limit, as identified in paragraph (e)(1)(vii) of this section, NMFS, by notice in the **Federal Register** will close the Chinook Salmon Savings Area, as defined in Figure 8 to this part, to directed fishing for pollock with trawl gear consistent with the following dates:

(*1*) From the effective date of the closure notice until April 15, and from September 1 through December 31, if the Regional Administrator determines that the annual limit of chinook salmon will be attained before April 15.

(*2*) From September 1 through December 31, if the Regional Administrator determines that the annual limit of chinook salmon will be attained after April 15.

(B) [Reserved]

* * * * *

5. In part 679, Figure 8 is removed and Figure 8a and Figure 8b are added to read as follows:

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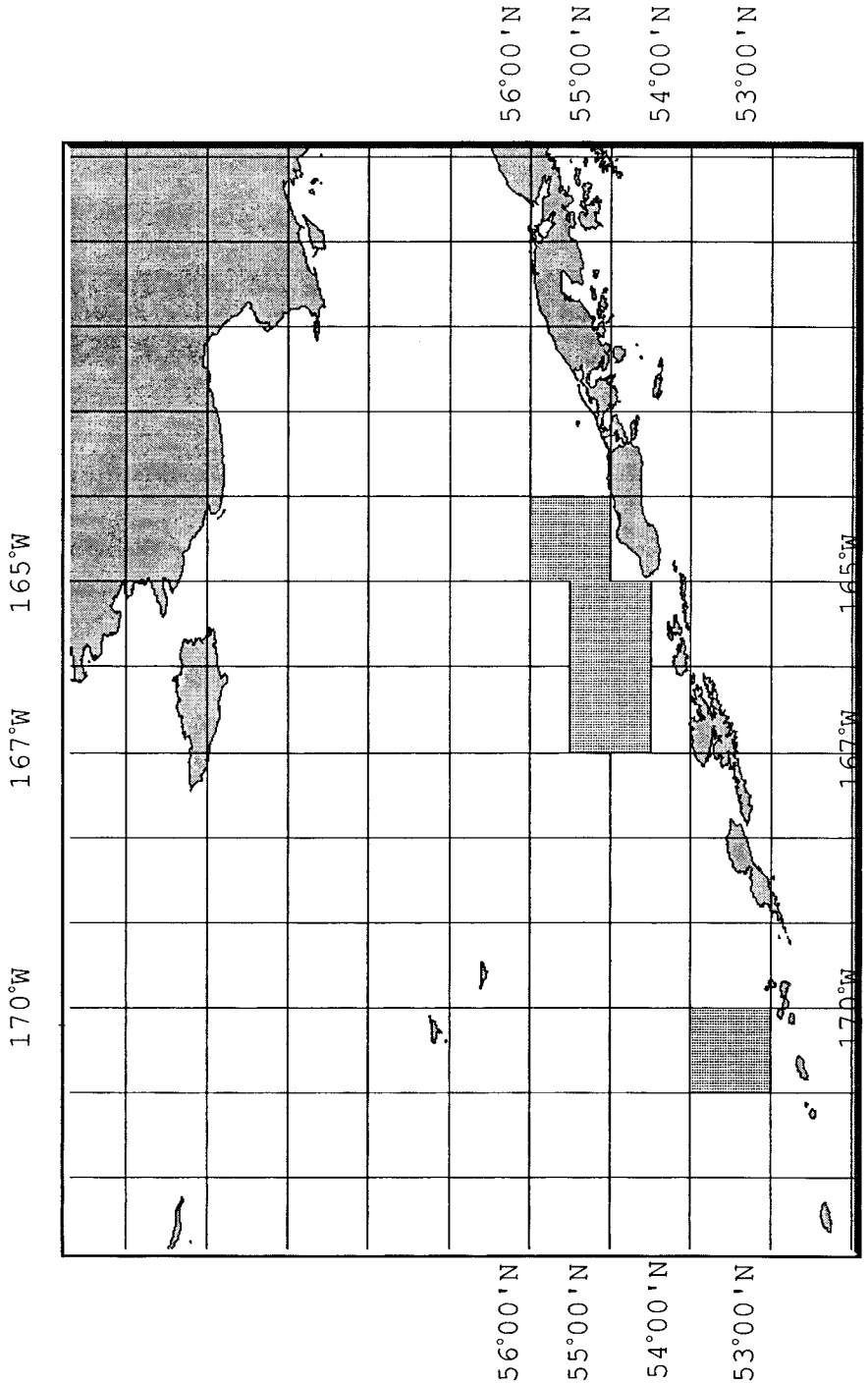
Figure 8a to part 679. Chinook Salmon Savings Areas of the BSAI a. Map



Chinook Salmon Savings Areas

Figure 8b.

The Chinook Salmon Savings Area as defined in the following two areas of the BSAI:

b. Coordinates

(1) The area defined by straight lines connecting the following coordinates in the order listed:

54° 00' N., 171° 00' W.;

54° 00' N., 170° 00' W.;

53° 00' N., 170° 00' W.;

53° 00' N., 171° 00' W.; and

54° 00' N., 171° 00' W.

(2) The area defined by straight lines connecting the following coordinates in the order listed:

56° 00' N., 165° 00' W.;

56° 00' N., 164° 00' W.;

55° 00' N., 164° 00' W.;

55° 00' N., 165° 00' W.;

54° 30' N., 165° 00' W.;

54° 30' N., 167° 00' W.;

55° 30' N., 167° 00' W.;

55° 30' N., 165° 00' W.; and

56° 00' N., 165° 00' W.

[FR Doc. 99–32926 Filed 12–20–99; 8:45 am]
BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991210331–9331–01; I.D. 102899B]

RIN 0648-AN34

Fisheries of the Exclusive Economic Zone off Alaska; Inshore Fee System for Repayment of the Loan to Harvesters of Pollock from the Directed Fishing Allowance Allocated to the Inshore Component under Section 206(b)(1) of the American Fisheries Act (AFA)

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes regulations to implement an inshore fee system for all pollock harvested under the inshore component (IC) of the Bering Sea/Aleutian Islands (BS/AI) directed fishing allowance under the AFA. The AFA authorized a $75 million loan to reduce fishing capacity for offshore component (OC) pollock and the inshore fee system as the means of repaying the loan. The proceeds of the loan partly paid the cost of removing nine OC catcher-processors (which the AFA specified) from all commercial fishing in the U.S. exclusive economic zone (EEZ). The intent of this rule is to implement the inshore fee system that the AFA requires.

DATES: Comments must be received at the appropriate address or facsimile number (see **ADDRESSES**) no later than January 5, 2000.

ADDRESSES: Copies of the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) may be obtained from Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3282. Written comments should be sent to Michael L. Grable at the above address. Comments also may be sent, via facsimile, to 301-713-1306. NMFS will not accept comments sent by e-mail or the Internet. Comments involving the reporting burden estimates or any other aspects of the collection of information requirements contained in this proposed rule should be sent to both Michael L. Grable and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Michael L. Grable, 301-713–2390, fax 301-713-1306, e-mail *Michael.Grable@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The President signed the AFA into law on October 20, 1998, as part of the Omnibus Appropriations Bill for fiscal year 1999 (Pub. L. 105-277). The AFA required the Federal Government to pay, not later than December 31, 1998, $90 million to the owners of nine large catcher processors harvesting OC pollock. In return, eight of these vessels had to stop all commercial fishing in the EEZ immediately and be scrapped by December 31, 2000. Although the ninth vessel did not have to be scrapped, it also had to stop all commercial fishing in the EEZ immediately and the owner had to certify that neither the owner nor anyone who purchased the vessel from the owner intended to use the vessel outside the EEZ to harvest any fish that also occur within the EEZ.

Before December 31, 1998, NMFS paid the required amount to the owners of these vessels. In accordance with the AFA, NMFS paid $15 million of this amount from an AFA appropriation and the remaining $75 million from the proceeds of a fishing capacity reduction loan under sections 1111 and 1112 of Title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f and g) (Title XI). The AFA requires the loan to be repaid by fees under section 312(d)(2)(C) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(d)(2)(C)) (Magnuson-Stevens Act).

Upon payment of the $90 million, NMFS revoked all nine vessels' domestic fishing permits, one owner provided the certificate required for the ninth vessel, and the other owners began preparing for scrapping the remaining eight vessels. All eight vessels are presently undergoing scrapping at a scrapping facility in San Francisco, CA. Scrapping is scheduled to be completed before December 31, 2000.

Under the AFA and section 312(d)(2)(C) of the Magnuson-Stevens Act, all vessel owners harvesting IC pollock (fish sellers) are required to pay the fee and all fish processors making the first ex-vessel purchase of IC pollock (fish buyers) are required to collect the fee and account for and forward the fee revenue to NMFS for the purpose of repaying the loan. The fish sellers pay, and the fish buyers collect, the fee when the fish buyers deduct the fee from the ex-vessel value of all IC pollock before paying the net ex-vessel value of the fish to the fish sellers.

The fee is six-tenths (0.6) of one cent for each pound, round-weight, of all IC pollock that fish sellers land. The AFA provides that fee payment and collection shall begin on or after January 1, 2000. Although the loan's scheduled maturity is 30 years, the AFA also provides that fee payment and collection ''shall * * * continue without interruption until such loan is fully repaid * * *'' (section 207(b)(2)). Whether the loan is repaid before, at, or after its scheduled maturity depends on when fee payment begins, the rate at which loan principal bears interest, annually determined total allowable pollock catches after December 31, 1999, and IC pollock allocations after December 31, 2004. NMFS has not finally determined the rate at which the loan's principal bears interest. The other variables controlling the time required to fully repay the loan are not presently determinable.

Several assumptions are, consequently, necessary to project the time required to fully repay the loan. The first assumption involves the time at which fee payment begins. For projection purposes, NMFS assumes that fee payment begins on January 1, 2000. The second assumption involves the rate at which the principal of the loan bears interest. NMFS believes this rate will be either 7.09 percent or 7.81 percent per annum. For projection purposes, NMFS assumes the higher of these two rates. The third assumption involves the annual total allowable catch of pollock after December 31, 1999, which may vary from year to year. For projection purposes, NMFS assumes that the average annual total allowable catch of pollock after December 31, 1999, will be the same as the average annual total allowable catch of pollock over the 14-year period from the beginning of 1985 through end of 1998 (2.769 billion pounds or 1.256 million metric tons). The fourth assumption involves IC pollock allocations after December 31, 2004. This depends on whether the North Pacific Fishery Management Council maintains IC pollock allocations after December 31, 2004, at the same level as IC pollock allocations, under the AFA, from January 1, 1999, to December 31, 2004 (i.e., 42 percent of total allowable catch). For the purposes of this projection, NMFS assumes that IC pollock allocations after December 31, 2004, will be the same as IC pollock allocations from January 1, 1999, to December 31, 2004. Under these four

assumptions, the loan will be repaid in 21 years (i.e., 9 years less than the scheduled maturity). Actual conditions different than those NMFS assumes for the purpose of this projection may, however, cause loan repayment to occur sooner or later than here projected. Future total allowable catches may be the biggest determinate of the time actually required to repay this loan.

Accordingly, this rule proposes that fee payment and collection begin on the seventh calendar day after the date that a final fee rule is published in the FEDERAL REGISTER and continue without interruption until the loan is fully repaid (without regard to whether this is a period longer or shorter than the loan's scheduled maturity of 30 years).

The fixed interest rate at which the loan accrues interest is two percent of the principal amount of the loan outstanding plus such additional percent as the Secretary of Commerce is obligated to pay as the interest cost of borrowing from the United States Treasury the funds from which NMFS made the loan. On December 30, 1998, NMFS disbursed all $75 million of the loan's original principal amount. Interest has been accruing since that date. NMFS is still determining the interest rate that the statutory formula requires (which, as noted, will probably be either 7.09 percent or 7.81 percent per annum). NMFS will apply all fee receipts, first, to the payment of accrued interest and, second, to the reduction of loan principal.

Section 312(b)-(e) of the Magnuson-Stevens Act provides for fishing capacity reduction programs (which may be funded by loans under sections 1111 and 1112 of Title XI). Although the IC pollock loan is authorized by the AFA rather than by section 312(b)-(e) of the Magnuson-Stevens Act, the AFA specifies that the IC pollock loan is repayable under section 312(d)(2)(C) of the Magnuson-Stevens Act. NMFS has already proposed a framework rule for implementing section 312(b)-(e) of the Magnuson-Stevens Act (64 FR 6854, February 11, 1999). The proposed framework rule would establish detailed provisions for paying, collecting, disbursing, accounting for, and reporting about fees repaying fishing capacity reduction loans.

NMFS had hoped to implement the fishing capacity reduction framework rule before NMFS had to provide for payment and collection of the IC pollock fee. NMFS intended to provide for payment and collection of the IC pollock fee by making the loan subject to the framework rule provisions about fee payment and collection. Because NMFS has not yet adopted and promulgated the framework rule, however, NMFS must now separately provide for payment and collection of the IC pollock fee by proposing to add a temporary subpart G to 50 CFR part 679 (subpart G). NMFS has drawn most of the procedural provisions of the proposed subpart G from the proposed framework rule. After a framework rule is adopted and promulgated, NMFS will revoke subpart G and concurrently provide, by a program implementation rule under the framework rule, for the continuing payment and collection of the IC pollock fee.

Classification

The Assistant Administrator for Fisheries, NMFS, determined that this proposed rule is consistent with the AFA, the Magnuson-Stevens Act, Title XI, and other applicable laws.

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

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) describing the impact of the action in the proposed rule on small entities. In summary, the IRFA states that this proposed rule would apply to about 100 fish sellers (all of whom are small entities) and about eight fish buyers (none of whom are small entities). The IRFA indicates that the average annual fee expense for each fish seller will likely be about $60,000. Recordkeeping and reporting requirements would fall primarily on the fish buyers, who collect the fee. The estimated annual compliance cost to fish buyers is about $5,568 per fish buyer. Several minimal recordkeeping and reporting requirements also apply to fish sellers. A fish seller must report to NMFS if a fish buyer refuses to collect the fee. The estimated compliance cost, should a fish buyer's refusal to collect the fee require a fish seller to report, is about $25 per report. In specific and limited circumstances when a fish seller becomes a *de facto* fish buyer for recordkeeping and reporting requirements, the estimated compliance cost is the same as a fish buyer's compliance cost. The Paperwork Reduction Act (PRA) discussion further details these costs. This proposed rule does not duplicate or conflict with any other Federal rules of which NMFS is aware. NMFS considered two alternatives that might have lessened the economic impact on small entities. These alternatives were not collecting the fee and delaying fee collection. Not collecting the fee would both cost the Nation $75 million and violate the AFA. Delaying fee collection would increase the ultimate cost to fish sellers (because interest would continue to accrue on an unreduced $75 million principal balance) and prolong the time required for fish sellers to repay the loan. The AFA requires that the fee system remain in effect until the loan is fully repaid. The EA/RIR/IRFA further discusses these alternatives and their economic impact on IC pollock fish sellers and fish buyers.

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

This proposed rule contains collection of information requirements subject to the PRA that have been approved by OMB under OMB Control No. 0648-0376. This PRA approval occurred in connection with proposal of the framework rule for implementing section 312(b)-(e) of the Magnuson-Stevens Act, including a collection of information burden for fee payment, collection, disbursement, accounting, and reporting under section 312(d)(2)(C) of the Magnuson-Stevens Act. The AFA provides that payment and collection of the IC pollock fee shall be in accordance with 312(d)(2)(C) of the Magnuson-Stevens Act.

The estimated response times for this collection of information are: 10 minutes per fishing trip to maintain records on transactions, 2 hours per fish buyer's monthly report, 4 hours per fish buyer's annual report, and 2 hours per fish buyer's or fish seller's report about fish sellers who refuse to pay, or fish buyers who refuse to collect, the fee.

These estimated response times include the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and revising the collection of information.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the function of the agency, including: whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to

NMFS (see **ADDRESSES**) and to OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 15, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

AUTHORITY: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.1, a paragraph (k) is added to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(k) This part also governs payment and collection of the loan, under the American Fisheries Act (AFA), the Magnuson-Stevens Act, and Title XI of the Merchant Marine Act, 1936, made to all persons who harvest pollock from the directed fishing allowance allocated to the inshore component under section 206(b)(1) of the AFA.

3. A subpart G is added to read as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

Subpart G—Inshore Fee System for Repayment of the Loan to Harvesters of Pollock from the Directed Fishing Allowance Allocated to the Inshore Component under Section 206(b)(1) of the AFA

Sec.
679.60 Definitions.
679.61 Loan.
679.62 Fee payment and collection.
679.63 Fee collection deposits, disbursements, records, and reports.
679.64 Late charges.
679.65 Enforcement.
679.66 Prohibitions and penalties.

Subpart G—Inshore Fee System for Repayment of the Loan to Harvesters of Pollock from the Directed Fishing Allowance Allocated to the Inshore Component under Section 206(b)(1) of the AFA

Authority: Pub. L. 105-277, 16 U.S.C. 1801, *et seq.*

§ 679.60 Definitions.

In addition to the definitions in the Magnuson-Stevens Act and in § 679.1 of this title, the terms used in this subpart have the following meanings:

American Fisheries Act (AFA) means Title II of Pub. L. 105-277.

Borrower means (individually and collectively) all persons who, after January 1, 2000, harvest fee fish from the IC directed fishing allowance.

Delivery value means the gross ex-vessel value of all fee fish at fish delivery.

Deposit principal means all collected fee revenue that a fish buyer deposits in a segregated deposit account maintained in a federally chartered national bank for the sole purpose of aggregating collected fee revenue before sending the fee revenue to NMFS for repaying the loan.

Fee means the six-tenths (0.6) of one cent that fish buyers deduct (under the inshore fee system provided for in section 207(b) of the AFA) from the gross ex-vessel value of each pound of round weight fee fish harvested from the IC directed fishing allowance.

Fee fish means all pollock harvested from the IC directed fishing allowance until such time as the loan's principal and interest are fully repaid.

Fish buyer means the first ex-vessel fish buyer who, in an arm's-length transaction, purchases fee fish from a fish seller.

Fish delivery means the point at which a fish buyer first takes title to, or possession of, fee fish from a fish seller.

Fish seller means the harvester who catches and, in an arm's-length transaction, first sells fee fish to a fish buyer.

IC directed fishing allowance means the directed fishing allowance allocated to the inshore component under section 206(b)(1) of the AFA.

Loan means the loan authorized by section 207(a) of the AFA.

Net delivery value means the delivery value minus the fee.

Subaccount means the Inshore Component Pollock Subaccount of the Fishing Capacity Reduction Fund in the U.S. Treasury for the deposit of all funds involving the loan.

§ 679.61 Loan.

(a) *Principal amount.* The loan's principal amount is $75,000,000 (seventy five million dollars).

(b) *Disbursement.* NMFS disbursed, in accordance with section 207(d)(1) of the AFA, the loan's full principal amount on December 30, 1998.

(c) *Interest.* Interest shall, from the date NMFS disbursed the loan until the date the borrower fully repays the loan, accrue at a fixed rate equal to 2 percent of the principal amount of the loan outstanding plus such additional percent as the Secretary of Commerce shall be obligated to pay as the interest cost of borrowing from the United States Treasury the funds with which to make the loan. Interest shall be simple interest and shall accrue on the basis of a 365-day year.

(d) *Repayment.* The fee shall be the exclusive source of loan repayment. The fee shall be payable on all fee fish, without interruption, until such a time as all loan principal and accrued interest is fully repaid.

(e) *Application of fee receipts.* NMFS shall apply all fee receipts it receives, first, to payment of the loan's accrued interest and, second, to reduction of the loan's principal balance.

(f) *Obligation.* The borrower shall repay the loan in accordance with the AFA and this subpart.

§ 679.62 Fee payment and collection.

(a) *Payment and collection.* (1) The full fee is due and payable at the time of fish delivery. Each fish buyer shall collect the fee at the time of fish delivery by deducting the fee from the delivery value before paying (or, as the case may be, promising later to pay) the net delivery value. Each fish seller shall pay the fee at the time of fish delivery by receiving from the fish buyer the net delivery value (or, as the case may be, the fish buyer's promise later to pay the net delivery value) rather than the delivery value. Regardless of when the fish buyer pays the net delivery value, the fish buyer shall collect the fee at the time of fish delivery;

(2)(i) Each fish seller shall be deemed, for the purpose of the fee collection, deposit, disbursement, and accounting requirements of this subpart, to be both the fish seller and the fish buyer (and all requirements and penalties under this subpart applicable to both a fish seller and a fish buyer shall equally apply to the fish seller) each time that the fish seller sells fee fish to:

(A) Any fish buyer whose place of business is not located in the United States, who does not take delivery, title, or possession of the fee fish in the United States, who is not otherwise subject to this subpart, or to whom or against whom NMFS cannot otherwise apply or enforce this subpart,

(B) Any fish buyer who is a general food-service wholesaler or supplier, a restaurant, a retailer, a consumer, some other type of end-user, or some other fish buyer not engaged in the business of buying fish from fish sellers for the purpose of reselling the fish (either with or without processing the fish), or

(C) Any other fish buyer who the fish seller has good reason to believe is a fish buyer not subject to this subpart or to whom or against whom NMFS cannot otherwise apply or enforce this subpart,

(ii) In each such case the fish seller shall, with respect to the fee fish involved in each such case, discharge, in addition to the fee payment requirements of this subpart, all the fee collection, deposit, disbursement, accounting, recordkeeping, and reporting requirements that this subpart otherwise imposes on the fish buyer, and the fish seller shall be subject to all the penalties this subpart provides for a fish buyer's failure to discharge such requirements;

(b) *Notification*. (1) Before the time that the fee first becomes effective, NMFS will send an appropriate fee payment and collection notification to each affected fish seller and fish buyer of whom NMFS has knowledge.

(2) When NMFS determines that the loan is fully repaid, NMFS will publish a **FEDERAL REGISTER** notice that the fee is no longer in effect and should no longer be either paid or collected. NMFS will then also send notification to each affected fish seller and fish buyer of whom NMFS has knowledge;

(c) *Failure to pay or collect*. (1) If a fish buyer refuses to collect the fee in the amount and manner that this subpart requires, the fish seller shall then advise the fish buyer of the fish seller's fee payment obligation and of the fish buyer's fee collection obligation. If the fish buyer still refuses to properly collect the fee, the fish seller, within the next seven calendar days, shall forward the fee to NMFS. The fish seller at the same time shall also advise NMFS in writing of the full particulars, including:

(i) The fish buyer's and fish seller's name, address, and telephone number,

(ii) The name of the fishing vessel from which the fish seller made fish delivery and the date of doing so,

(iii) The quantity and delivery value of fee fish that the fish seller delivered, and

(iv) The fish buyer's reason (if known) for refusing to collect the fee in accordance with this subpart;

(2) If a fish seller refuses to pay the fee in the amount and manner that this subpart requires, the fish buyer shall then advise the fish seller of the fish buyer's collection obligation and of the fish seller's payment obligation. If the fish seller still refuses to pay the fee, the fish buyer shall then either deduct the fee from the delivery value over the fish seller's protest or refuse to buy the fee fish. The fish buyer shall also, within the next seven calendar days, advise NMFS in writing of the full particulars, including:

(i) The fish buyer's and fish seller's name, address, and telephone number,

(ii) The name of the fishing vessel from which the fish seller made or attempted to make fish delivery and the date of doing so,

(iii) The quantity and delivery value of fee fish the fish seller delivered or attempted to deliver,

(iv) Whether the fish buyer deducted the fee over the fish seller's protest or refused to buy the fee fish, and

(v) The fish seller's reason (if known) for refusing to pay the fee in accordance with this subpart.

§ 679.63 Fee collection deposits, disbursements, records, and reports.

(a) *Deposit accounts*. Each fish buyer that this subpart requires to collect a fee shall maintain a segregated account at a federally chartered national bank for the sole purpose of depositing collected fee revenue and disbursing the fee revenue directly to NMFS in accordance with paragraph (c) of this section.

(b) *Fee collection deposits*. At the end of each business week, each fish buyer shall deposit, in the deposit account established under paragraph (a) of this section, all fee revenue, not previously deposited, that the fish buyer has collected through a date not more than 2 calendar days before the date of deposit. Neither the deposit account nor the principal amount of deposits in the account may be pledged, assigned, or used for any purpose other than aggregating collected fee revenue for disbursement to the subaccount in accordance with paragraph (c) of this section. The fish buyer is entitled, at any time, to withdraw deposit interest (if any), but never deposit principal, from the deposit account for the fish buyer's own use and purposes.

(c) *Deposit principal disbursement*. On the last business day of each month, the fish buyer shall disburse to NMFS the full amount of deposit principal then in the deposit account. The fish buyer shall do this by check made payable to ''NOAA Inshore Component Pollock Loan Subaccount.'' The fish buyer shall mail each such check to the subaccount lockbox account that NMFS establishes for the receipt of the disbursements of deposit principal. Each disbursement shall be accompanied by the fish buyer's settlement sheet completed in the manner and form that NMFS specifies. NMFS will specify the subaccount's lockbox account and the manner and form of settlement sheet by means of the notification in § 679.62(b)(1).

(d) *Records maintenance*. Each fish buyer shall maintain, in a secure and orderly manner for a period of at least 3 years from the date of each transaction involved, at least the following information:

(1) For all deliveries of fee fish that the fish buyer buys from each fish seller:

(i) The date the delivery is made,

(ii) The seller's identity,

(iii) The round weight of fee fish delivered,

(iv) The identity of the fishing vessel that delivers the fee fish,

(v) The delivery value,

(vi) The net delivery value,

(vii) The identity of the payor to whom the net delivery value is paid, if other than the fish seller,

(viii) The date the net delivery value is paid, and

(ix) The total fee amount collected;

(2) For all fee collection deposits to and disbursements from the deposit account:

(i) The dates and amounts of deposits,

(ii) The dates and amounts of disbursements to the subaccount's lockbox account, and

(iii) The dates and amounts of disbursements to the fish buyer or other parties of interest earned on deposits.

(e) *Annual report*. On December 31, 2000, and on each December 31 thereafter until the loan is fully repaid, each fish buyer shall submit to NMFS a report, on or in the form NMFS specifies, containing the following information for the preceding year for all fee fish each fish buyer purchases from fish sellers:

(1) Total round weight bought;

(2) Total delivery value paid;

(3) Total fee amount collected;

(4) Total fee collection amounts deposited by month;

(5) Dates and amounts of monthly disbursements to the subaccount lockbox;

(6) Total amount of interest earned on deposits and disbursed to the fish buyer or other parties; and

(7) Depository account balance at year-end.

(f) *State records*. If landing records that a state requires from fish sellers contain some or all of the data that this section requires and confidentiality does not prevent NMFS' access to the records maintained for the state, then fish buyers can use such records to meet appropriate portions of this section's recordkeeping requirements. If, however, state confidentiality provisions make such records unavailable to NMFS, then fish buyers shall maintain separate records for NMFS that meet the requirements of this section.

(g) *Audits*. NMFS or its agents may audit, in whatever manner NMFS believes reasonably necessary for the duly diligent administration of the loan, the books and records of the fish buyers and the fish sellers in order to ensure proper fee payment, collection, deposit, disbursement, accounting, recordkeeping, and reporting. Fish buyers and fish sellers shall make all records of all transactions involving fee fish catches, fish deliveries, and fee payments, collections, deposits, disbursements, accounting, recordkeeping, and reporting available to NMFS or its agents at reasonable times and places and promptly provide all requested information reasonably related to these records that such fish sellers and buyers may otherwise lawfully provide. Trip tickets (or similar accounting records establishing the round weight pounds of fee fish that each fish buyer buys from each fish seller each time that each fish buyer does so) are essential audit documentation.

(h) *Confidentiality of records*. NMFS and its auditing agents shall maintain the confidentiality of all data to which NMFS has access under this section and shall neither release the data nor allow the data's use for any purpose other than the purpose of this subpart; provided, however, that NMFS may aggregate such data so as to preclude their identification with any fish buyer or any fish seller and use them in the aggregate for other purposes.

(i) *Refunds*. When NMFS determines that the loan is fully repaid, NMFS will refund any excess fee receipts, on a last-in/first-out basis, to the fish buyers. Fish buyers shall return the refunds, on a last-in/first-out basis, to the fish sellers who paid the amounts refunded.

§ 679.64 Late charges.

The late charge for fee payment, collection, deposit, and/or disbursement shall be one and one-half (1.5) percent per month for the total amount of the fee not paid, collected, deposited, and/or disbursed when due to be paid, collected, deposited, and/or disbursed. The full late charge shall apply to the fee for each month or portion of a month that the fee remains unpaid, uncollected, undeposited, and/or undisbursed.

§ 679.65 Enforcement.

NMFS shall institute an action at law against each fish seller and/or fish buyer responsible for non-payment, non-collection, non-deposit, and/or non-disbursement of the fee in accordance with this subpart to enforce the collection from such fish seller and/or fish buyer of any fee (including penalties and all costs of collection) due and owing the United States on account of the loan that such fish seller and/or fish buyer should have, but did not, pay, collect, deposit, and/or disburse in accordance with this subpart. All such loan recoveries shall be applied to reduce the unpaid balance of the loan.

§ 679.66 Prohibitions and penalties.

(a) The following activities are prohibited, and it is unlawful for anyone to:

(1) Avoid, decrease, interfere with, hinder, or delay payment or collection of (or otherwise fail to fully and properly pay or collect) any fee due and payable under this subpart or convert (or otherwise use for any purpose other than the purpose this subpart intends) any paid or collected fee;

(2) Fail to fully and properly deposit on time the full amount of all fee revenue collected under this subpart into a deposit account and disburse the full amount of all deposit principal to the subaccount's lockbox account—all as this subpart requires;

(3) Fail to maintain full, timely, and proper fee payment, collection, deposit, and/or disbursement records or make full, timely, and proper reports of such information to NMFS—all as this subpart requires;

(4) Fail to advise NMFS of any fish seller's refusal to pay, or of any fish buyer's refusal to collect, any fee due and payable under this subpart;

(5) Refuse to allow NMFS or agents that NMFS designates to review and audit at reasonable times all books and records reasonably pertinent to fee payment, collection, deposit, disbursement, and accounting under this subpart or otherwise interfere with, hinder, or delay NMFS or it agents in the course of their activities under this subpart;

(6) Make false statements to NMFS, any of the NMFS' employees, or any of NMFS' agents about any of the matters in this subpart;

(7) Obstruct, prevent, or unreasonably delay or attempt to obstruct, prevent, or unreasonably delay any audit or investigation NMFS or its agents conduct, or attempt to conduct, in connection with any of the matters in this subpart; and/or

(8) Otherwise materially interfere with the efficient and effective repayment of the loan.

(b) Anyone who violates one or more of the prohibitions of paragraph (a) of this section is subject to the full range of penalties the Magnuson-Stevens Act and 15 CFR part 904 provide (including, but not limited to: civil penalties, sanctions, forfeitures, and punishment for criminal offenses) and to the full penalties and punishments otherwise provided by any other applicable law of the United States.

[FR Doc. 99–33068 Filed 12–20–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 64, No. 244

Tuesday, December 21, 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

Farm Service Agency

National Drought Policy Commission

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of Commission meetings.

SUMMARY: The National Drought Policy Commission (Commission) will continue discussion on its draft report of the Commission findings. They will also discuss the status of Commission activities and other committee business. This notice announces three meetings being held via teleconferencing on January 5, January 19, and February 2, 2000.

DATES: The Commission will conduct three meetings via teleconferencing: (1) January 5, 2000, from 1 p.m. to 3 p.m.; (2) January 19, 2000, from 2 p.m. to 4 p.m.; (3) February 2, 2000, from 1 p.m. to 3 p.m. in the Mezzanine Conference Room, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC. All times noted are Eastern Standard Time. Members of the public in the Washington, DC area may attend the meetings in person at the above address. All meetings are open to the public; however, teleconference lines are limited. Please call Leona Dittus at 202–720–3168 if you are interested in participating in the call and to obtain the dial-in number. Seating is limited and is available on a first-come, first-served basis.

Persons with disabilities who require accommodations to attend or participate in this meeting should contact Leona Dittus, on 202–720–3168, or Federal Relay Service at 1–800–877–8339, and leona.dittus@usda.gov, by COB December 30, 1999.

COMMENTS: The public is invited to respond and/or to submit additional comments, concerns, and issues for consideration by the Commission.

ADDRESSES: Comments and statements should be sent to Leona Dittus, Executive Director, National Drought Policy Commission, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Room 6701–S, STOP 0501, Washington, DC 20250–0501.

FOR FURTHER INFORMATION CONTACT: Leona Dittus (202) 720–3168; FAX (202) 720–9688; internet leona.dittus@usda.gov.

SUPPLEMENTARY INFORMATION: The purpose of the Commission is to provide advice and recommendations to the President and Congress on the creation of an integrated, coordinated Federal policy, designed to prepare for and respond to serious drought emergencies. Tasks for the Commission include developing recommendations that will: (a) Better integrate Federal laws and programs with ongoing State, local, and tribal programs; (b) improve public awareness of the need for drought mitigation, prevention, and response; and (c) determine whether all Federal drought preparation and response programs should be consolidated under one existing Federal agency, and, if so, identify the agency.

Below is a draft vision statement and set of principles to guide the Commission.

Draft Vision Statement

Our vision is of a well-informed, involved U.S. citizenry and its governments prepared for and capable of lessening the impacts of drought—consistently and timely—in the new millennium.

This vision is based on the following principles:

Consideration of all affected entities and related issues, including legal, economic, geographic, climate, religious, and cultural differences; fairness and equity; and environmental concerns;

Comprehensive, long-term strategies that emphasize drought planning and measures to reduce the impacts of drought;

Federal role focused on appropriate coordination, technical assistance, education, and incentives while at all times respecting the rights and responsibilities of Federal, State, and local governments, and tribal sovereignty;

Self-reliance and self-determination;

Lessons learned from past drought experiences;

Shared drought-related expertise and knowledge across international borders.

In addition to your own views and thoughts regarding a national drought policy, as you review the draft vision and guiding principles, the Commission would be interested in your thoughts regarding the following questions:

1. What is the best means for informing the public of Federal assistance for drought planning and mitigation?
2. What type of information do you need for responding to the drought?
3. What needs do you or your organization presently have with respect to addressing drought conditions?
4. What do you see as the Federal role with respect to drought preparedness? Drought response? Should Federal emergency assistance be contingent on advance preparedness?
5. Are there any ways you feel that the Federal government could better coordinate with State, regional, tribal, and local governments in mitigating or responding to droughts?
6. What lessons have you or your organization learned from past drought experiences that would be beneficial in the creation of a national drought policy?

Signed at Washington, D.C., on December 16, 1999.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 99–33097 Filed 12–16–99; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Request for Public Comment on Information Collections Related to Pilot and Private Crop Insurance Policies

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C., chapter 35), this notice announces Federal Crop Insurance Corporation's (FCIC) public comment period on the information collection requests (ICRs) associated with new crop insurance programs (pilot and private crop insurance policies) administered by Federal Crop Insurance Corporation (FCIC). FCIC is soliciting comments on pilot and private crop

insurance policies in selected states and counties concerning its information collections. FCIC is also soliciting comments on the crop history survey which collects information needed to determine the feasibility of developing crop insurance programs.

DATES: Written comments on this notice will be accepted until close of business February 22, 2000.

ADDRESSES: Interested persons are invited to submit written comments to Timothy Hoffmann, Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Comments may also be sent via the Internet to *DirectorPDD@RM.FCIC.USDA.GOV.* A copy of each response will be available for public inspection and copying from 7:00 a.m. to 4:30 p.m., CST, Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: Nancy Conway, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO address listed above, telephone (816) 926–7743.

SUPPLEMENTARY INFORMATION:

Title: New Crop Insurance Programs (pilot and private crop insurance policies).

Abstract: The Secretary of Agriculture's goal is to expand the crop insurance safety net to as many agricultural crops and commodities as possible. In keeping with these goals, FCIC is currently offering new crop insurance policies (pilot and private crop insurance policies). Pilot programs are generally approved for a 3 year period and then analyzed to determine whether or not to extend the program. Private products are approved by the FCIC board of directors (board) and are in force until the program is withdrawn by the company or canceled by the board. The following is a list of pilot and private crop insurance policies along with the state and counties where they are offered. In the future, a decision may be made to implement these program(s) into additional areas. The Crop History Survey may be used by FCIC to request information from insureds prior to the implementation of the pilot or private crop insurance policies or to expand these programs if this information is not otherwise available. Also, producers requesting crop insurance are required to complete specific forms dependent on the crops to be insured.

Adjusted Gross Revenue (AGR): Androscoggin, Cumberland, Kennebec, and York counties, Maine; Barnstable, Berkshire, Bristol, Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Nantucket, Norfolk, Plymouth, Suffolk, and Worchester counties, Massachusetts; Belknap, Cheshire, Hillsborough, Merrimack, Rockingham, Strafford, and Sullivan counties, New Hampshire; Allegan, Berrien, Kent, Ottawa, and Van Buren counties, Michigan; and Alachua, Gilchrist, Levy, Marion, Sumter, and Suwannee counties, Florida effective for the 1999 through 2001 insurance years.

Avocado (APH): Dade County, Florida, effective for the 1999 through 2001 crop years.

Avocado/Mango Tree: Dade County, Florida, effective for the 1998 through 2001 crop years.

Barley (IP): In the specified number of counties in the following states; Idaho-43, Minnesota-74, Montana-108, North Dakota-53, Oregon-30, South Dakota-28, and Washington-38.

Barley, Feed (RA): Ada, Adams, Bannock, Bear Lake, Benewah, Bingham, Blaine, Boise, Bonner, Bonneville, Boundary, Butte, Camas, Canyon, Caribou, Cassia, Clark, Clearwater, Custer, Elmore, Franklin, Fremont, Gem, Gooding, Idaho, Jefferson, Jerome, Kootenai, Latah, Lemhi, Lewis, Lincoln, Madison, Minidoka, Nez Perce, Oneida, Owyhee, Payette, Power, Shoshone, Teton, Twin Falls, and Valley counties in Idaho; and Adams, Barnes, Benson, Billings, Bottineau, Billings, Bowman, Burke, Burleigh, Cass, Cavalier, Dickey, Divide, Dunn, Eddy, Emmons, Foster, Golden Valley, Grand Forks, Grant, Griggs, Hettinger, Kidder, La Moure, Logan, McHenry, McIntosh, McKenzie, McLean, Mercer, Morton, Mountrail, Nelson, Oliver, Pierce, Ramsey, Ranson, Renville, Richland, Rolette, Sargent, Sheridan, Sioux, Slope, Stark, Steele, Stuteman, Towner, Traill, Walsh, Ward, Wells, and Williams counties in North Dakota.

Beans, Fresh Market: Dade County, Florida; Hyde and Tyrrell counties in North Carolina; Accomack and Northhampton counties in Virginia effective for the years 2000 through 2002.

Cabbage: Rabun County, Georgia; Monroe, Orleans, and Ontario counties, New York; Pasquotank County, North Carolina; Schuylkill County, Pennsylvania; and Carroll County, Virginia for the 1999 through 2001 crop years; and in Colquitt County, Georgia; Flagler, Putnam, and St. Johns counties, Florida; Horry County, South Carolina; and Hidalgo County, Texas for the 2000 through 2002 crop years.

Canola/rapeseed (RA): Bannock, Benewah, Bingham, Blaine, Bonner, Bonneville, Boundary, Caribou, Cassia, Clearwater, Fremont, Gooding, Idaho, Jefferson, Jerome, Kootenai, Latah, Lewis, Lincoln, Madison, Minidoka, Nez Perce, Oneida, Power, Teton, and Twin Falls counties in Idaho; and Barnes, Benson, Bottineau, Burke, Burleigh, Cavalier, Divide, Eddy, Foster, Grand Forks, Griggs, Kidder, McHenry, McLean, Mountrail, Nelson, Pembina, Pierce, Ramsey, Renville, Rolette, Sheridan, Stutsman, Towner, Walsh, Ward, Wells, and Williams counties in North Dakota.

Cherries: San Joaquin County, California; Lake County, Montana; Hood River and Wasco counties, Oregon; and Benton, Chelan, Douglas, Franklin, and Yakima counties, Washington, for the 1999 through 2001 crop years.

Chile Peppers: Cochise County, Arizona; and Luna and Hidalgo counties, New Mexico for the 2000 through 2002 crop years.

Citrus, Dollar (CA): Fresno and Tulare counties, California for the 2001 through 2003 crop years.

Clams, Cultivated: Brevard, Dixie, Indian River, and Levy counties, Florida; Barnstable, Bristol, Dukes, Nantucket, and Plymouth counties, Massachusetts; and Charleston County, South Carolina; Accomack and Northampton counties, Virginia for the 2000 through the 2002 crop years.

Corn (GRIP): All counties in Illinois except Alexander, Cook, Du Page, Hardin, Johnson, Pope, Pulaski, and Union; all counties in Indiana except Brown, Crawford, Dearborn, Floyd, Monroe, Ohio, Perry, and Switzerland; and all counties in Iowa.

Corn (RA): All counties in Illinois, Indiana, Iowa, North Dakota, Minnesota except Cook, Lake, and Ramsey counties, and South Dakota except Jackson, and Shannon counties.

Cotton (CRC): In the specified number of counties in the following states; Alabama-60, Arizona-9, Arkansas-31, California-12, Florida-24, Georgia-97, Kansas-13, Louisiana-25, Mississippi-66, Missouri-7, New Mexico-11, North Carolina-53, Oklahoma-35, South Carolina-41, Tennessee-25, Texas-163, and Virginia-11.

Crambe: Bottineau, Golden Valley, Grant, Hettinger, Renville, Stark, and Ward counties in North Dakota for the 1999 through 2001 crop years.

Cucumber: Gratiot and St. Joseph counties, Michigan; Columbus, Duplin, Franklin, Greene, Robeson counties, North Carolina; Clarendon County, South Carolina; and Frio, Medina,

Uvalde counties, Texas for the 2000 through 2002 crop year.

Grain Sorghum (CRC): In the specified number of counties in the following states: Alabama-34, Arkansas-49, California-5, Colorado-18, Florida-5, Georgia-79, Illinois-62, Indiana-17, Iowa-32, Kansas-105, Kentucky-21, Louisiana-34, Maryland-5, Michigan-3, Minnesota-1, Mississippi-49, Missouri-92, Nebraska-75, New Mexico-10, North Carolina-81, North Dakota-1, Ohio-7, Oklahoma-71, South Carolina-21, South Dakota-59, Tennessee-35, Texas-202, Virginia-79, and Wisconsin-2.

Grain Sorghum (IP): 201 specified counties in Texas.

Mint: Starke and Pulaski counties, Indiana; Flathead county, Montana; Grant and Yakima counties, Washington; Dane, Marquette, Jefferson, and Walworth counties, Wisconsin, effective for the 2000 through 2002 crop years.

Mustard: All counties in North Dakota for the 1999 through 2001 crop years.

Pecan Revenue: Dougherty, Lee, and Mitchell Counties, Georgia; Culberson, El Paso, and Pecos Counties, Texas; and Dona Ana County, New Mexico, effective for the 1998 through 2000 crop years.

Rangeland (GRP): Big Horn, Blaine, Carter, Custer, Fallon, Glacier, Phillips, Powder River, Roosevelt, Rosebud, Sheridan, and Valley counties, Montana, effective for the 1999 through 2001 crop years.

Rice (CRC): In the specified number of counties in the following states: Arkansas-43, California-13, Florida-3, Louisiana-30, Mississippi-27, Missouri-7, Oklahoma-1, Tennessee-1, and Texas-23.

Soybeans (GRIP): All counties in Illinois except Cook, Du Page, Hardin, Johnson, and Pope: all counties in Indiana except Brown, Crawford, Dearborn, Floyd, Lawrence, Monroe, Ohio, Orange, Perry, and Switzerland; and all counties in Iowa effective for the 1999 and subsequent crop years.

Soybeans (IP): In the specified number of counties in the following states: Arkansas-42; Illinois-102; Indiana-92; Maryland-22; North Carolina-89; and Adair, Audubon, Cass, Dallas, Guthrie and Shelby counties in Iowa.

Soybeans (RA): All counties in Illinois, Indiana, and Iowa; all counties in Minnesota except Carlton, Cass, Cook, Hubbard, Itasca, Lake, St. Louis, and Wadena counties; all counties in North Dakota except Adams, Billings, Bowman, Burke, Divide, Dunn, Emmons, Golden Valley, Grants, Hettinger, Logan, McHenry, McIntosh, McKenzie, Mercer, Morton, Oliver, Renville, Sioux, Slope, Stark, and Williams counties; and all counties in South Dakota except Bennett, Butte, Corson, Custer, Dewey, Fall River, Haakon, Harding, Jackson, Jones, Lawrence, Lyman, Meade, Mellette, Pennington, Perkins, Shannon, Stanley, and Zieback counties.

Squash, Winter: Colbert and Jackson counties, Alabama; Hartford County in Connecticut; Berkshire, Bristol, Franklin, Hampden, and Hampshire counties in Massachusetts; Atlantic, Cumberland, Gloucester, and Salem counties in New Jersey; and Monroe Orange, Orleans, and Suffolk counties in New York; and Bucks and Lancaster counties in Pennsylvania for the 1999 through 2001 crop years.

Strawberries: Fresno, Merced, Santa Barbara, and Ventura counties in California; Hillsborough and Manatee counties in Florida; Livingston and Tangipahoa counties in Louisiana; and Brunswick, Buncombe, Columbus, Cumberland, Duplin, Guilford, Haywood, Henderson, Johnston, New Hanover, Pender, Robeson, and Wake counties in North Carolina for the 2000 through 2002 crop years.

Sunflowers, (RA): All counties in North Dakota.

Sweetpotato: Baldwin County, Alabama; Merced County in California; Avoyelles, Morehouse and West Carroll Parishes in Louisiana; Columbus and Johnston Counties in North Carolina; Horry County in South Carolina effective for the 1998 through 2000 crop years.

Watermelon: Geneva County, Alabama; Sussex County in Delaware; Alachua, Jackson, and Manatee counties in Florida; Crisp, Tift, Turner, and Worth counties in Georgia; Wicomico county in Maryland; Chowan and Sampson counties in North Carolina; and Duval, Frio, and Hidalgo counties in Texas, effective for the 1999 through 2001 crop years.

Wheat (CRC): In the specified number of counties in the following states: Alabama-58, Arizona-11, Arkansas-53, California-34, Colorado-38, Georgia-128, Idaho-42, Illinois-102, Indiana-92, Iowa-66, Kansas-105, Kentucky-75, Louisiana-41, Michigan-80, Minnesota-84, Mississippi-77, Missouri-96, Montana-54, Nebraska-82, New Mexico-15, North Carolina-82, North Dakota-53, Ohio-76, Oklahoma-77, Oregon-30, South Carolina-45, South Dakota-66, Tennessee-67, Texas-206, Utah-23, Virginia-76, Washington-29, Wisconsin-55, and Wyoming-16.

Wheat (RA): Ada, Adams, Bannock, Bear Lake, Benewah, Bingham, Blaine, Bonner, Bonneville, Boundary, Butte, Camas, Canyon, Caribou, Cassia, Clark, Clearwater, Custer, Elmore, Franklin, Fremont, Gem, Gooding, Idaho, Jefferson, Jerome, Kootenai, Latah, Lemhi, Lewis, Lincoln, Madison, Minidoka, Nez Perce, Oneida, Owyhee, Payette, Power, Teton, Twin Falls, Valley, and Washington counties in Idaho; 84 counties in Minnesota; all counties in North Dakota; and 66 counties in South Dakota.

Wild Rice: Lassen, Modoc, Shasta, and Sutter counties in California; and Aitkin, Beltrami, Clearwater, Lake of the Woods, Pennington, and East Polk counties in Minnesota, for the 1999 through 2001 crop years.

Crop History Survey: Surveys are necessary in certain situations before a decision can be made to develop or implement crop insurance coverage under a pilot program. Information is needed to determine the feasibility of developing crop insurance programs. This information is used to develop premium rates and insurance prices and other actuarial design components. Actual historic acreage and yield data from growers is often the only source of this kind of information.

The agency seeks public comment regarding the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has 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 gathering technology.

Burden Statement: FCIC has estimated an information collection burden for its forms that includes the time to complete the form and for the representative to explain the benefits of the program to the producer. Various activities of the loss adjuster (e.g., measuring acreage and making appraisals) was also considered in the burden estimates.

Total Burden: The total burden is estimated at 49,782 hours.

Purpose of Information Collected: The crop insurance program is the principal risk management tool used by producers of farm products. The Act requires the crop insurance program to operate on an actuarially sound basis. To meet these goals, existing crop programs must be improved and expanded, new crop products developed, and new insurance concepts studied for possible implementation. Meeting these goals

requires the collection of a wide range of information that is used in part to establish insurance coverage, premiums, payments, indemnities and allow for other program and administrative operations; as well as to create an information data base used to support continued development and improvements in crop insurance products and which meet the goal of a sound insurance program. The various categories of forms, the nature of the information collected, and the purpose for the information are described below.

Sales documents provide the information required to issue a crop insurance policy, such as the insured's name, address, social security number, crop(s) to be insured, dollar amount of insurance or price election and level of coverage selected by the producer, crop condition reports for perennial crops, assignment or transfer of indemnity, power of attorney, or other information affecting policy benefits.

Yield Reports establish an individual producer's actual production and yield history and provide the basis for calculating the insured's production guarantee. The production guarantee is the simple average of a minimum of four yearly yields up to a maximum of ten yields.

Option forms allow a producer to modify the insurance coverage contained in the provisions in the crop insurance policy. An option may provide additional or limit the insurable causes of loss, provide different methods of determining losses, or provide different types of unit division to increase a producer's protection, etc. Producers select a coverage on the option form.

Acreage reports indicate the location, number of acres, dates planted, share (percent of interest), and other information by unit for each crop to be insured. The reports include plant inventory and container reports for nursery crops, planting records for some crops, and tonnage reports for raisins. These reports are used to determine premium and liability and must be submitted on or before the final acreage reporting date specified in the policy.

Claim Forms notify an insurance provider of a loss due to an insurable cause. Appraisal worksheets for each individual crop are used in the field by the loss adjuster to determine the production to be counted in establishing the loss. Other forms in this category are various inspection, appraisal, production records, and claim for indemnity documents. The claim for indemnity form summarizes information determined by the loss adjuster and is required to compute the amount of an indemnity. The adjuster will determine from observation, appraisals, and measurements, the amount of harvested and unharvested production, primary and secondary (when applicable) causes of loss, number of units (when applicable), number of planted and harvested acres and any other information necessary to determine the amount of loss.

Survey Form is sometimes necessary to collect information about a crop prior to a pilot program being developed or before a pilot program is extended to other areas.

Frequency of Reporting: Some sales forms are completed only when a producer applies for crop insurance, e.g., the application and most coverage options. Canceling and reinstating insurance coverage, transferring insurance coverage to a different insurance provider, and changing the amount of insurance coverage are instances when forms would have to be completed again. Other forms are completed annually, such as forms used to collect crop acreage data, production data used to establish the insurance guarantee, and administrative forms such as the assignment of indemnity and certain coverage options. Acreage report forms must be completed every crop year and include such information as acres, type, practice, APH yields, share insured, etc. This information is used to establish the guarantee. More than one crop may be reported on one form, and producers may need to complete more than one form per year. Some acreage reports may need to be revised, which will require an additional report to be submitted during the crop year. Notice of damage and claim forms are completed by crop year, crop, and unit when a crop has been damaged or destroyed. FCIC estimated the proportion of insureds who complete each form in a given year, recognizing that some insureds complete the forms more than once in any given year and some of the forms are not filled out by every producer every year.

Recordkeeping Requirements: FCIC requires records to be kept for three years, but all records required by FCIC are retained as part of a normal business practice. Therefore, FCIC is not estimating additional burden related to recordkeeping.

Forms and Current OMB Docket Numbers: The following list of FCIC forms may be used for the above crops. This list has been compiled by grouping the forms in numerical order.

Form number	Form title	Current OMB number
FCI–5	Request for Actuarial Change	0563–0053
FCI–5–A	Request for Actuarial Change	0563–0053
FCI–5–B	Request for Actuarial Change	0563–0053
FCI–6	Statement of Facts	0563–0053
FCI–12	Crop Insurance Application	0563–0053
FCI–12–A	Contract Changes	0563–0053
FCI–12 AGR	Adjusted Gross Revenue Application	0563–
FCI–12–P	Pre-Acceptance Perennial Crop Inspection Report	0563–0053
FCI–12–P (Cherries)	Pre-Acceptance Perennial Crop Inspection Report	0563–
FCI–12–PAW (Alm/Cit/Fig/FrP/Pru/StF/Wal).	Pre-Acceptance Inspection Report (Almond/Citrus/Fig/Fresh Plum/Prune/Stonefruit/Walnut Addendum Worksheet).	0563–
FCI–12–PAW (Cherries)	Producer's Pre-Acceptance Worksheet	0563–
FCI–12–PAW (Perennial Crops)	Producer's Pre-Acceptance Worksheet	0563–0053
FCI–19	Crop Insurance Acreage Report	0563–0053
FCI–19–A (APH)	Production and Yield Report	0563–0053
FCI–19–A (APH) (Review Form)	Actual Production History Review Report	0563–0053
FCI–19–A (APH–BPW)	Block Production Worksheet	0563–0053
FCI–19–A (APH–USW)	Unit Summary Worksheet	0563–0053
FCI–20	Application for Assignment of Indemnity	0563–0053
FCI–21	Transfer of Right to Indemnity	0563–0053
FCI–73	Certification Form	0563–0053

Form number	Form title	Current OMB number
FCI–74	Production Worksheet	0563–
FCI–74 (Cont. Sheet)	Production Worksheet, Continuation Sheet—Harvested Production	0563–0053
FCI–74 AGR	AGR Claim for Indemnity Worksheet	0563–
FCI–74 Clams	Clam Production Worksheet/Claim Form	0563–
FCI–74–A (Florida Avocado)	Florida Avocado Appraisal Worksheet	0563–
FCI–74–A (Beans, Fr. Market)	Fresh Market Beans Appraisal Worksheet	0563–
FCI–74–A (Cabbage)	Cabbage Appraisal Worksheet	0563–
FCI–74–A (Canola/rapeseed)	Canola and Rapeseed Appraisal Worksheet	0563–
FCI–74–A (Cherries)	Cherry Appraisal Worksheet	0563–
FCI–74–A (Chile Pepper)	Chile Pepper Appraisal Worksheet	0563–
FCI–74–A (AZ/CA Citrus)	Citrus Appraisal Worksheet	0563–0053
FCI–74–A (Clams)	Clam Appraisal Worksheet	0563–
FCI–74–A (CN/GS/SIL)	Weight Method Appraisal Worksheet—(Corn, Popcorn, Hybrid Seed Corn, Grain Sorghum, and Silage).	0563–0053
FCI–74–A (Cotton)	Appraisal Worksheet—Cotton	0563–0053
FCI–74–A (Crambe)	Crambe Appraisal Worksheet	0563–
FCI–74–A (Cucumbers)	Cucumber Appraisal Worksheet	0563–
FCI–74–A (Florida Fruit Trees)	Florida Fruit Tree Worksheet	0563–
FCI–74–A (Florida Fruit Trees) (Continuation Sheet).	Florida Fruit Tree Worksheet	0563–
FCI–74–A Mint (Winter Coverage Option)	Mint Appraisal Worksheet (Winter Coverage Option)	0563–
FCI–74–A (Mustard)	Mustard Appraisal Worksheet	0563–
FCI–74–A (Pecan)	Pecan Appraisal Worksheet	0563–
FCI–74–A (Random Path)	Random Path Worksheet	0563–
FCI–74–A (Small Grains)	Small Grains Appraisal Worksheet (Wheat-Barley-Rye-Rice-Cultivated Wild Rice)	0563–0053
FCI–74–A (Soybeans)	Soybeans Appraisal Worksheet	0563–
FCI–74–A (Winter Squash)	Appraisal Worksheet Winter Squash (Mature Stage)	0563
FCI–74–A (Strawberries)	Strawberry Appraisal Worksheet	0563–
FCI–74–A (Sunflowers)	Appraisal Worksheet Sunflowers	0563–
FCI–74–A (Sweetpotato)	Appraisal Worksheet Sweetpotato	0563–
FCI–74–A (Watermelon)	Watermelon Appraisal Worksheet	0563–
FCI–74–B (CN&GS)	Stand Reduction Appraisal Worksheet (Corn and Grain Sorghum)	0563–0053
FCI–74–B (Cotton)	Appraisal Worksheet Cotton	0563–0053
FCI–74–B (Cucumbers)	Cucumber Stand Reduction and Hail Damage Worksheet	0563–
FCI–74–B Mint (Ministill)	Mint Appraisal Worksheet (Ministill)	0563–
FCI–74–B (Pecan)	Summary of Harvested Pecan Production	0563–
FCI–74–B (Strawberry)	Strawberries Summary of Harvested Production	0563–
FCI–74–C (Avocados)	Summary of Harvested Avocado Production Worksheet	0563–
FCI–74–C (CN&GS)	Hail Damage Appraisal Worksheet (Corn & Grain Sorghum)	0563–0053
FCI–74–C (Cucumber)	Cucumber Appraisal Worksheet	0563–
FCI–74–D (Cucumber)	Summary of Harvested Production	0563–
FCI–74 T–P–C	Production Worksheet	0563–
FCI–74 T–P–C (Cont. Sheet)	Production Worksheet (Continuation Sheet—Harvested Production)	0563–0053
FCI–74 T–P–C AUP (QAW)	AUP Cotton Quality Adjustment Worksheet	0563–0053
FCI–78	Request To Exclude Hail And Fire	0563–0053
FCI–480	Request for Policy Cancellation and Transfer of Experience Data	0563–0053
FCI–532	Power of Attorney	0563–0053
FCI–549	High-Risk Land Exclusion Option	0563–0053
FCI–552	Self-Certification Replant Worksheet	0563–0053
FCI–553	Unit Division Option	0563–0053
FCI–568	Pick Record for Perennial Crops	0563–0053
FCI–575	Social Security Number (SSN) and Employer Identification (EIN) Reporting Form	0563–0053
FCI–576	Disclaimer	0563–0053
FCI–587	Request to Waive Administrative Fees for Catastrophic Crop Coverage	0563–0053
FCI–598	Cabbage Pilot Crop Insurance Provisions Disclaimer	0563–
FCI–599	Underwriting Report/Pre-acceptance Inspection/Self-certification Worksheet	0563–
FCI–820	Crop History Survey	0563–
FCI–821 AGR	Annual Farm Report	0563–
FCI–822 AGR	Inventory and Accounts Receivable Report	0563–
FCI–823 AGR	Agricultural Commodity Profile	0563–
FCI–824 AGR	Animal Inventory/Accounting Worksheet	0563–

Signed in Washington, D.C., on December 15, 1999.

Robert J. Prchal,

Deputy Administrator, Insurance Services, Federal Crop Insurance Corporation.

[FR Doc. 99–32954 Filed 12–20–99; 8:45 am]

BILLING CODE 3410–FA–P

DEPARTMENT OF AGRICULTURE

Forest Service

Bark Beetle Analysis Environmental Impact Statement Medicine Bow-Routt National Forests, Hahns Peak/Bears Ears Ranger District, Routt County, CO

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service, and Medicine Bow-Routt National Forests will prepare an Environmental Impact Statement (EIS). The EIS will assess and disclose the environmental effects of an imminent bark beetle analysis. The area of the analysis is the Hahns Peak/Bears Ranger District and the portion of the Parks Ranger District East of the Continental Divide to the boundary of the Medicine Bow-Routt National Forest.

Over the next few months the Medicine Bow-Routt National Forests will be developing a proposed action and making decisions on how to respond to a bark beetle epidemic. The public is strongly encouraged to participate in this process.

An epidemic will cause significant changes to the forest landscape, recreation experience, watershed conditions, and wildlife habitat—changes that many people will not consider positive. Spruce and pine trees on private lands throughout Routt, Moffatt, and Grand counties will be at risk, including trees in urban areas.

The Forest Service has been working since late spring to define the problems an epidemic will present. Along with key members of the community, Forest Service officials visited the Dixie National Forest in Utah to see how they were managing their current bark beetle epidemic. A community task force was developing that continues to meet regulatory. Field surveys have been conducted on National Forest System lands to estimate the potential effects of bark beetles on various resources. Extensive beetle population surveys have also been completed.

The U.S. Forest Service has a responsibility to manage National Forests for the public good. Various laws, regulations and policies frame the purpose of National Forests and provide reasons for the Forest Service to manage a bark beetle epidemic. The guiding legal framework compels the Forest Service to:

- Prevent an epidemic from spreading to adjacent lands where possible,
- Maintain healthy and aesthetically pleasing stands of trees in the ski area,
- Restrict insect outbreaks in timber management, recreation, and scenic areas,
- Sustain the growing stock of timber,
- Protect the wildlife and plant species that depend on mature spruce forest, and
- Maintain watershed health.

DATES: Public Scoping began with a mailing to people who expressed an interest in the Routt Divide Blowdown. South Fork Salvage Analysis, and Upper Elk River Access Analyses, land owners within the Forest Service boundaries adjacent to the analysis area, and State, County, and local officials. There will be a 45-day public comment period following the publication of this notice.

On January 6, 1999, Forest Service specialists will host an open house for the public to discuss the Bark Beetle Analysis from 4:00 pm until 7:00 pm at the Forest Service Office, 925 Weiss Dr., Steamboat Springs, CO 80487.

A Draft Environmental Impact Statement (DEIS) will be prepared and available after the scoping comment period. After a 45-day comment period from the date of this notice, a Final Environmental Impact Statement (FEIS) will be prepared and available for the Bark Beetle Analysis.

ADDRESSES: Mail comment letters to and request further information from: Andy Cadenhead, Interdisciplinary Team Leader, Medicine Bow-Routt National Forest, 925 Weiss Dr., Steamboat Springs, CO 80487, (970) 870–2220.

Responsible official: Jerry E. Schmidt, Forest Supervisor, Medicine Bow-Routt National Forests, 2468 Jackson Street, Laramie, WY 82070.

Jerry Schmidt,

Forest Supervisor.

[FR Doc. 99–32980 Filed 12–20–99; 8:45 am]

BILLING CODE 3410–6M–M

DEPARTMENT OF AGRICULTURE

Forest Service

Pendola Fire Restoration Project, Tahoe National Forest, Yuba County, CA

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an Environmental Impact Statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service, Tahoe National Forest, will prepare an Environmental Impact Statement (EIS) for proposed timber salvage, wildlife habitat improvement, and non-native and invasive plant control projects within the 2,600-acre National Forest System land portion of the Pendola Fire Restoration Project analysis area located just north of Bullards Bar Reservoir and west of the town of Camptonville, California, near the Pendola Ranch. The project area is located within all or portions of T18N, R07E; T18N; R08E; T19N, R07E; and T19N, R08E MDB&M.

The agency invites comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments should be made in writing and postmarked by January 7, 2000.

ADDRESSES: Written comments concerning the project should be directed to U.S.F.S., Tahoe National Forest, Downieville Ranger District, ATTN: Dennis Stevens, 15924 Highway 49, Camptonville, CA 95922.

FOR FURTHER INFORMATION CONTACT: Jeane Masquelier, District Ranger, or Dennis Stevens, Project Manager, Downieville Ranger District, Camptonville, CA 95922 at (530) 288–3231.

SUPPLEMENTARY INFORMATION: On October 16, 1999, the Pendola wildfire started just north of Bullards Bar Reservoir. Before being controlled, the fire consumed over 4,565 acres of land on the northeast side of the reservoir, with approximately 2,600 of these acres being National Forest System lands. These 2,600 acres of National Forest System lands are being analyzed for projects within the Pendola Fire Restoration analysis area. The analysis area incorporates land within the Upper Mill Creek, Lower Mill Creek, Bridger Creek, North Yuba Arm of Bullards Bar Reservoir, and the Willow Creek Arm of Bullards Bar Reservoir watersheds, all of which drain into the North Yuba River, on which Bullards Bar Reservoir is situated. Located west of Camptonville, California, and north of and immediately adjacent to the reservoir at around 2,000 to 2,500 feet in elevation, the area is dominated by mixed conifer and hardwood forest, of which over 70 percent burned with moderate to high intensity, leaving scattered live tress, small patches of live trees, and many

areas that completely burned. The remaining 30 percent burned with a lower intensity, leaving partially burned or lightly underburned areas. This loss of vegetation has resulted in large areas of exposed soils, large amounts or new fuels, and the loss of standing timber. The fire also affected other important resources, such as wildlife habitat, visual quality, historic and prehistoric sites, fisheries, sensitive plant and animal species, and water quality.

In preparing the Environmental Impact Statement, the Forest Service will identify and analyze a range of alternatives that address the issues developed for this area. One of the alternatives will be no treatment. An ecological approach will be used to achieve multiple-use management of the Pendola Fire area. It also means that the needs of people and environmental values will be blended in such a way that this area's desired condition would represent a diverse healthy, productive, and sustainable ecosystem.

Public participation will be important during the analysis, especially during the review of the draft Environmental Impact Statement. The Forest Service is seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. We have already initiated consultation with the United States Fish and Wildlife Service for the bald eagle and the California red-legged frog. This input will be used in preparation of the draft Environmental Impact Statement. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3 Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

Comments from other Federal, State, and local agencies, organizations, and individuals who may be interested in, or affected by, the decision are encouraged to identify other significant issues. Public participation will be solicited through mailing letters to mining claim owners, private land owners, and special use permitees within the Downieville Ranger District boundaries; posting information in local towns; and mailing letters to local timber industries, politicians, school boards, county supervisors, and environmental groups. A public meeting is scheduled for January 6, 2000, at the Downieville District Ranger Station office, in Camptonville, CA, from 2 pm until 5 pm.

The draft EIS is expected to be filed with the Environmental Protection Agency and be available for public review in February, 2000. The comment period on the draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is very important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft Environmental Impact Statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft Environmental Impact Statement stage but that are not raised until after completion of the final Environmental Impact Statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final Environmental Impact Statement.

To assist the Forest Service in identifying and considering issues and concerns of the proposed action, comments on the draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft Environmental Impact Statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The final Environmental Impact Statement is expected to be available by April, 2000. The responsible official, the Forest Supervisor of the Tahoe National Forest, 631 Coyote St., Nevada City, CA 95959, will document the decision and reasons for the decision in the Record of Decision.

Dated: December 13, 1999.

Steven T. Eubanks,

Forest Supervisor.

[FR Doc. 99–32953 Filed 12–20–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by February 22, 2000.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Program Development & Regulatory Analysis, Rural Utilities Service, USDA, 1400 Independence Ave., SW., STOP 1522, Room 4034 South Building, Washington, DC 20250–1522. Telephone: (202) 720–0736. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION:

Title: Certification of Authority.

OMB Control Number: 0572–0074.

Type of Request: Extension of currently approved information collection.

Abstract: The Rural Utilities Service (RUS) manages loan programs in accordance with the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) (RE Act). A major factor in managing loan programs is controlling the advance of funds. One reason to control funds is so that the actual borrowers get their money. The use of RUS Form 675 allows this control to be achieved by providing a list of authorized signatures against which signatures requesting funds are compared. RUS Form 675 provides an effective control against the unauthorized release of funds by providing a list of authorized signatures. OMB Circular A–123, Management Accountability and Control, states that information should be maintained on a current basis and that cash should be protected from unauthorized use. This

form allows borrowers to keep RUS up-to-date of any changes in signature authority and controls the release of funds only to authorized borrower representatives.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.1 of an hour per response.

Respondents: Small businesses and organizations.

Estimated Number of Respondents: 450.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 45.

Copies of this information collection, and related form and instructions, can be obtained from Bob Turner, Program Development and Regulatory Analysis, at (202) 720–0696.

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 will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption 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 respondents, including the use of automated collection techniques or other forms of information technology. Comments may be sent to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1522, Room 4034 South Building, Washington, DC 20250–1522.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: December 14, 1999.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 99–33056 Filed 12–20–99; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by February 22, 2000.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Program Development & Regulatory Analysis, Rural Utilities Service, USDA, 1400 Independence Ave., SW., STOP 1522, Room 4034 South Building, Washington, D.C. 20250–1522. Telephone: (202) 720–0736. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION:

Title: Request for Release of Lien and/or Approval of Sale.

OMB Control Number: 0572–0041.

Type of Request: Reinstatement without change of previously approved information collection.

Abstract: The Rural Utilities Service (RUS) makes mortgage loans and loan guarantees to electric and telecommunications systems to provide and improve electric and telecommunications service in rural areas pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) (RE Act). All current and future capital assets of RUS borrowers are ordinarily mortgaged or pledged to the Federal Government as security for RUS loans. Assets include tangible and intangible utility plant, non-utility property, construction in progress, and materials, supplies, and equipment normally used in a telecommunications system. The RE Act and the various security instruments, e.g., the RUS mortgage, limit the rights of a RUS borrower to dispose of its capital assets.

The RUS Form 793, Request for Release of Lien and/or Approval of Sale, allows the telecommunications program borrower to seek agency permission to sell some of its assets. The form collects detailed information regarding the proposed sale of a portion of the borrower's system. RUS telecommunications borrowers fill out the form to request RUS approval in order to sell capital assets.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.84 hours per response.

Respondents: Small businesses or organizations.

Estimated Number of Respondents: 75.

Estimated Number of Responses per Respondent: 1.

Estimate Total Annual Burden on Respondents: 213.

Copies of this information collection can be obtained from Bob Turner, Program Development and Regulatory Analysis, at (202) 720–0696.

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 will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption 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 on other forms of information technology. Comments may be sent to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1522, Room 4034 South Building, Washington, D.C. 20250–1522.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: December 14, 1999.

Christopher McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 99–33057 Filed 12–20–99; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Alabama Electric Cooperative; Notice of Availability of an Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Availability of an Environmental Assessment.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) is issuing an environmental assessment with respect to the potential environmental impacts related to the construction and operation of a 496 megawatt combined cycle electric generation plant and associated facilities. RUS may provide financing assistance to Alabama Electric Cooperative for the project.

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Rural Utilities Service, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue,

SW, Washington, DC 20250–1571, telephone: (202) 720–0468. Information is also available from Phillip Burgess, Alabama Electric Cooperative, Highway 29 North, Andalusia, Alabama 36420–0550, telephone (334) 427–3309.

SUPPLEMENTARY INFORMATION: The project consists of the construction of a 496 megawatt combined cycle electric generation plant in Covington County, Alabama. The preferred site for the plant is adjacent to Alabama Electric Cooperative's McWilliams electric generating plant located in Gantt, Alabama. Associated with the plant will be approximately 18.6 miles of 230 kilovolt transmission line from the proposed plant to Opp, Alabama, and approximately 60 miles of natural gas pipeline from the proposed plant to Flomaton, Alabama. The natural gas pipeline to be constructed and owned by Southeast Alabama Gas District, will traverse Covington, Conecuh, and Escambia Counties, all of which are in Alabama. Alternative sites for the plant location were considered near Alabama Electric Cooperative's Lowman Plant at Leroy in Washington County, Alabama, and at a site in Damascus/Teddy area in Escambia County, Alabama. Three electric transmission line routes and three natural gas pipeline routes were considered.

Alabama Electric Cooperative prepared an environmental report for RUS, which describes the project and assesses its potential environmental impacts. RUS has conducted an independent evaluation of the environmental report, assisted in its completion, and accepted it as the agency's environmental assessment. No significant impacts are expected as a result of the construction and operation of the project.

The environmental assessment can be reviewed at the Andalusia Public Library, South Three Notch Street, Andalusia, Alabama; the White Smith Memorial Library, 213 College Ave., Jackson, Alabama; the Brewton Public Library, 206 Jackson Street, Brewton, Alabama; the headquarters of Alabama Electric Cooperative at the address provided above, or the headquarters of RUS, at the address provided above.

Questions and comments should be sent to RUS at the address provided. RUS will accept questions and comments on the environmental assessment for at least 35 days from the date of publication of this notice.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental review procedures as prescribed by RUS' Environmental Policies and Procedures, 7 CFR Part 1794.

Dated: December 15, 1999.

Mark S. Plank,

Acting Director, Engineering and Environmental Staff.

[FR Doc. 99–33055 Filed 12–20–99; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Participation Agreement and Trade Mission Application.

Agency Form Number: ITA–4008P.

OMB Number: 0625–0147.

Type of Request: Regular Submission.

Burden: 2,792 hours.

Number of Respondents: 7,500.

Avg. Hours Per Response: 20 minutes–70 minutes.

Needs and Uses: The ITA–4008P, ''Participation Agreement,'' is the vehicle by which individual firms agree to participate in any of ITA's trade promotion program, and record their required participation fee to the U.S. Department of Commerce (DOC). Together with the relevant ITA–4008P–A, ''Conditions of Participation,'' it forms a contract between the individual firm and the DOC. The ITA–4008P–1, ''Trade Mission Application,'' is used to solicit information from firms seeking to participate in DOC overseas trade missions covered by the Statement of Policy Governing Overseas Trade Missions of the Department of Commerce issued by Secretary Daley on March 3, 1997. Trade Mission participants will be required to complete the Forms ITA–4008P, ITA–4008P–1, and ITA–4008P–A. Other DOC trade event participants will complete Forms ITA–4008P and ITA–4008P–A.

Affected Public: Businesses or other for profit, not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection can be obtained by calling or writing Linda Engelmeier, Department Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230. Email LEngelme@doc.gov.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: December 16, 1999.

Linda Engelmeier,

Department Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–33074 Filed 12–20–99; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Census Bureau

Evaluation of the Census 2000 Partnership Program

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 22, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Sherri Norris, Bureau of the Census, Room BH–120–2, Washington, DC 20233; (301) 457–8081.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census 2000 Partnership Program works to establish partnerships with state, local and tribal governments; private industry; local governments and community groups. The goal is to increase the awareness of the census and to increase response rates,

especially among historically undercounted populations.

The program has both a national and a regional focus. On the national level, the program is designed to implement promotional activities that may be sponsored and/or supported by national/umbrella government and nongovernmental organizations. In addition, the Census Bureau will partner with Fortune 500 companies to promote the importance of the census through the services and products they provide.

The regional partnership program reflects the Census Bureau's belief that the foundation for broad-based participation in the census must be built at the community level. Its primary purpose is to establish partnerships with state, local, and tribal governments; community organizations; businesses and the media.

The partnership program is a means to encourage mail response by those people who are not persuaded by direct mail, advertising or other methods. It complements these other methods by spreading information about the census, by assuring people that it is okay to participate and by providing help if needed.

For the evaluation, a contractor will be hired to conduct the data collection. Self-administered mail questionnaires will be sent to a sample of Census 2000 partners. The questionnaire will ask the partners about the activities performed for the Census 2000 Partnership Program, about the materials they received, and about their recommendations for improving the Program. The results will be used to evaluate the program, for 2010 planning purposes and to improve future census operations.

II. Method of Collection

Mailed self-administered questionnaire with appropriate follow-up reminders.

III. Data

OMB Number: Not available.

Form Number: Forthcoming.

Type of Review: Regular Submission.

Affected Public: Individuals, representatives of the Census 2000 partnership organizations.

Estimated Number of Respondents: 10,000.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 2,500.

Estimated Total Annual Cost: There is no cost to the respondent other than the time taken to complete the survey.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Sections 141 and 193.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 16, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–33071 Filed 12–20–99; 8:45 am]

DEPARTMENT OF COMMERCE

Census Bureau

Evaluation of the Census 2000 Census in Schools Program

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 22, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Sherri Norris, Bureau of the Census, Room BH–120–2, Washington, DC 20233; (301) 457–8081.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census in Schools Program provides teachers with interactive, engaging, and colorful lesson plans that meet national and state curriculum standards and that: help students understand the importance and benefits of the census; promote awareness and encourage greater participation in the census; and strive to increase the mailback response rate for the census.

Census in Schools materials have been made available to schools nationwide. This includes a Spring 1999 mailing to all teachers in the 40 percent of the nation's schools in the hardest to enumerate areas, and a Fall 1999 mailing to the principals and selected school officials in the remaining 60 percent of schools.

For the evaluation, a contractor will be hired to conduct the data collection. Self-administered mail questionnaires will be sent to a sample of teachers and principals in the United States. The questionnaire will ask the teachers and principals about their involvement in Census in Schools, about the materials they may have received, and about their recommendations for improving the Program. The results will be used to evaluate the program, for 2010 planning purposes and to improve future census operations.

II. Method of Collection

Mailed self-administered questionnaire with appropriate follow-up reminders.

III. Data

OMB Number: Not available.

Form Number: Forthcoming.

Type of Review: Regular Submission.

Affected Public: Individuals, K–12 school teachers and principals in the United States.

Estimated Number of Respondents: 4,000.

Estimated Time Per Response: 10 minutes.

Estimated Total Annual Burden Hours: 667.

Estimated Total Annual Cost: There is no cost to the respondent other than the time taken to complete the survey.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Sections 141 and 193.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance

of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 16, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–33072 Filed 12–20–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–823]

Professional Electric Cutting Tools From Japan: Final Results of the Fifth Antidumping Duty Administrative Review and Revocation of the Antidumping Duty Order, in Part

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On August 10, 1999, the U.S. Department of Commerce published in the **Federal Register** the preliminary results of the fifth administrative review of the antidumping duty order on professional electric cutting tools from Japan (64 FR 43346). This review covers Makita Corporation Incorporated, a manufacturer and exporter of the subject merchandise to the United States. The period of review is July 1, 1997, through June 30, 1998.

We gave interested parties an opportunity to comment on our preliminary results. Our analysis of the comments received as well as our discussion of the issues related to revocation of the antidumping duty order are described below in the ''Revocation'' and ''Interested Party Comments'' sections of this notice. After review of the comments, we have not changed the preliminary results, including the determination to revoke the antidumping duty order, in part, with respect to professional electric cutting tools that are produced by Makita Corporation Incorporated and that are also exported by Makita Corporation Incorporated. The final results are listed below in the section ''Final Results of Review.''

EFFECTIVE DATE: December 21, 1999.

FOR FURTHER INFORMATION CONTACT: Brian Ledgerwood at (202) 482–3836 or Brian Smith at (202) 482–1766, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 1999, the U.S. Department of Commerce (''the Department'') published in the **Federal Register** preliminary results of the 1997–1998 administrative review of the antidumping duty order on professional electric cutting tools (''PECTs'') from Japan (64 FR 43346) (''preliminary results'') and its preliminary intent to revoke the antidumping duty order, in part, with respect to PECTs that are produced by Makita Corporation Incorporated and that are also exported by Makita Corporation Incorporated (''Makita Japan''). The period of review (''POR'') for this administrative review is July 1, 1997, through June 30, 1998.

The petitioner, Black & Decker (U.S.) Inc. (''Black & Decker''), and respondent Makita Japan (along with Makita Japan's affiliated selling agent in the United States, Makita U.S.A. Inc. (''Makita USA'')), requested a hearing in this case on September 9, 1999. The petitioner and Makita Japan/Makita USA (hereafter collectively referenced as ''Makita'') submitted case briefs and rebuttal briefs on September 10, 1999 and September 17, 1999, respectively. On October 8, 1999, based on the petitioner's and Makita's timely requests, the Department conducted a public hearing. Also, based on the petitioner's timely request, the Department conducted a non-public hearing in which counsel for the interested parties discussed proprietary information protected under an administrative protective order (''APO'').

The Department has now completed this administrative review, in accordance with section 751(a) of the Act.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all references to regulation are to the Department's regulations at 19 CFR Part 351 (1998).

Scope of Review

Imports covered by this review are shipments of PECTs from Japan. PECTs may be assembled or unassembled, and corded or cordless.

The term ''electric'' encompasses electro-mechanical devices, including tools with electronic variable speed features. The term ''assembled'' includes unfinished or incomplete articles, which have the essential characteristics of the finished or complete tool. The term ''unassembled'' means components which, when taken as a whole, can be converted into the finished or unfinished or incomplete tool through simple assembly operations (*e.g.*, kits).

PECTs have blades or other cutting devices used for cutting wood, metal, and other materials. PECTs include chop saws, circular saws, jig saws, reciprocating saws, miter saws, portable bank saws, cut-off machines, shears, nibblers, planers, routers, joiners, jointers, metal cutting saws, and similar cutting tools.

The products subject to this order include all hand-held PECTs and certain bench-top, hand-operated PECTs. Hand-operated tools are designed so that only the functional or moving part is held and moved by hand while in use, the whole being designed to rest on a table top, bench, or other surface. Bench-top tools are small stationary tools that can be mounted or placed on a table or bench. These are generally distinguishable from other stationary tools by size and ease of movement.

The scope of the PECTs order includes only the following bench-top, hand-operated tools: cut-off saws; PVC saws; chop saws; cut-off machines, currently classifiable under subheading 8461 of the Harmonized Tariff Schedule of the United States (''HTSUS''); all types of miter saws, including slide compound miter saws and compound miter saws, currently classifiable under subheading 8465 of the HTSUS; and portable band saws with detachable bases, also currently classifiable under subheading 8465 of the HTSUS.

This order does not include: professional sanding/grinding tools; professional electric drilling/fastening tools; lawn and garden tools; heat guns; paint and wallpaper strippers; and chain saws, currently classifiable under subheading 8508 of the HTSUS.

Parts or components of PECTs when they are imported as kits, or as accessories imported together with covered tools, are included within the scope of this order.

''Corded'' and ''cordless'' PECTs are included within the scope of this order. ''Corded'' PECTs, which are driven by electric current passed through a power cord, are, for purposes of this order, defined as power tools which have at least five of the following seven characteristics:

1. The predominate use of ball, needle, or roller bearings (*i.e.*, a majority or greater number of the bearings in the tool are ball, needle, or roller bearings);
2. Helical, spiral bevel, or worm gearing;
3. Rubber (or some equivalent material which meets UL's specifications S or SJ) jacketed power supply cord with a length of 8 feet or more;
4. Power supply cord with a separate cord protector;
5. Externally accessible motor brushes;
6. The predominate use of heat treated transmission parts (*i.e.,* a majority or greater number of the transmission parts in the tool are heat treated); and
7. The presence of more than one coil per slot armature.

If only six of the above seven characteristics are applicable to a particular ''corded'' tool, then that tool must have at least four of the six characteristics to be considered a ''corded'' PECT.

''Cordless'' PECTs, for the purposes of this order, consist of those cordless electric power tools having a voltage greater than 7.2 volts and a battery recharge time of one hour or less.

PECTs are currently classifiable under the following subheadings of the HTSUS: 8508.20.00.20, 8508.20.00.70, 8508.20.00.90, 8461.50.00.20, 8465.91.00.35, 85.80.00.55, 8508.80.00.65 and 8508.80.00.90. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

Duty Absorption

On September 24, 1998, the petitioner requested that the Department determine whether antidumping duties had been absorbed during the POR. Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. In this case Makita Japan sold to the United States through an importer (*i.e.,* Makita USA) that is affiliated within the meaning of section 751(a)(4) of the Act.

Section 351.213(j)(2) of the Department's regulations provides that for transition orders (*i.e.*, orders in effect on January 1, 1995), the Department will conduct duty absorption reviews, if requested, for administrative reviews initiated in 1996 or 1998. Because the order underlying this review was issued prior to January 1, 1995, and this review was initiated in 1998, a duty absorption determination in this segment of the proceeding is appropriate. As we have found that there is no dumping margin for Makita with respect to its U.S. sales, we have also found that there is no duty absorption for purposes of the final results (*see Final Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany,* 64 FR 43146 (August 9, 1999).).

Normal Value Comparisons

We made normal value (''NV'') comparisons to constructed export price based on the same methodology used in the preliminary results (*see* preliminary results at 43348–43350, and Preliminary Results Calculation Memorandum to the File dated August 3, 1999).

Determination to Revoke Order in Part

The Department ''may revoke, in whole or in part,'' an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia,* that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in each of the three years forming the basis of the request in commercial quantities; and (3) an agreement to reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. (*See* 19 CFR 351.222(e)(1).) Upon receipt of such a request, the Department may revoke an order, in part, if it concludes that: (1) The company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) it is not likely that the company will in the future sell the subject merchandise at less than NV; and (3) the company has agreed to immediate reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. See 19 CFR 351.222(b)(2); *see, e.g., Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke Order in Part: Pure Magnesium from Canada,* 64 FR 12977, 12978 (March 16, 1999) (''*Pure Magnesium from Canada*'').

In our *preliminary results*, we found that Makita met the requirements for revocation (*see preliminary results,* 64 FR 43351, 43352).

The petitioner argues that revocation is not appropriate because it is likely that Makita will resume selling subject merchandise below NV if the order is revoked. In general, the petitioner argues that Makita has avoided dumping margins in the past by drastically reducing its import volumes, and that Makita's pricing practices and loss in market share indicate that Makita is not able to compete effectively in the U.S. market without lowering prices. Additionally, the petitioner argues that Makita could easily expand its production capacity in Japan in order to begin selling at below NV in the future. Furthermore, the petitioner argues that market demand in Japan is declining, thereby increasing Makita's dependance on the U.S. market.

In response, Makita argues that its sales have in fact been in commercial quantities, and that the record clearly indicates that it is not likely that Makita will sell at below NV in the future if the order is revoked. Makita argues that it has experienced a drastic change in circumstance as a result of the building of its U.S. manufacturing facility, where a majority of Makita's electric cutting tools for the U.S. market are now produced. Thus, Makita stresses, most of its production of ''subject merchandise'' occurs in the United States, and consequently such products are no longer subject to the antidumping duty order. Makita notes that it has made and continues to make substantial investment in the U.S. facility, and that maintaining the U.S. facility is consistent with the company's objective of producing in close proximity to its customers. Furthermore, Makita states that, while it has additional capacity in its U.S. production facility, it has limited remaining production capacity in its facilities in Japan. As such, Makita

claims that it is not likely that Makita would ever shift production of its power tools back to Japan.

With regard to the market conditions and pricing levels, Makita argues that it has no need to sell at below NV, because the U.S. electric power tool market in general and electric cutting tool market in particular are healthy, stable, and growing, and the Japanese electric power tool market is also relatively stable. Makita further argues that it is able to charge premium prices because of its reputation for quality. Thus, Makita contends, it can make sales in the U.S. market, even when its prices are higher than its competitors' prices.

Upon review of the three criteria outlined at section 351.222(b) of the Department's regulations, the comments of the parties, and all of the evidence in the record, we have determined that the Department's requirements for revocation have been met. Based on the final results in this review and the final results of the two preceding reviews, Makita has demonstrated three consecutive years of sales at not less than NV. Furthermore, we find that Makita's aggregate sales to the United States have been made in commercial quantities during each of those years. Finally, based on our review of the record and the comments of the parties, we continue to find that it is not likely that Makita will sell at below NV in the future for the reasons set forth in the August 2, 1999, Revocation Memorandum (*see Memorandum Regarding Revocation of the Antidumping Duty Order on Professional Electric Cutting Tools from Japan* dated August 2, 1999 (hereafter ''August 2 Revocation Memorandum'').

Although, Makita's sales to the United States have decreased substantially since the imposition of the antidumping order, its exports of subject merchandise to the United States, in particular specialty PECTs, remain significant and reflect Makita's normal commercial practice. Further, while Makita has maintained consistent export volumes of its ''specialty'' PECTs, Makita transferred production of the remaining subject merchandise (*i.e.*, non-specialty PECTs) to the United States. Makita made a substantial investment in a U.S. manufacturing facility, and subsequently shifted production of subject merchandise to that facility. Additionally, the record indicates that the U.S. production facility now manufactures comparable volumes of non-specialty merchandise to those previously manufactured by Makita Japan. This significant change in business practice explains the decrease in Makita's exports of subject merchandise to the United States. With respect to products produced in Japan (*i.e.*, specialty PECTs), Makita has maintained consistent, significant levels of export sales levels to hundreds of U.S. customers since 1995 (*see* August 2 Revocation Memorandum at Attachment 2, Makita's October 26, 1998, section C response at Appendix C–2, and ''*Commercial Quantities*'' section below). Based on these facts (confirmed at verification) and our review of Makita Japan's sales practices, we find that we can reasonably conclude that the de minimis margins calculated for Makita are reflective of the company's normal commercial experience and provide a reasonable basis for our decision on revocation. *See* August 2 Revocation Memorandum at 10–11; and *Pure Magnesium from Canada* 64 FR 12977, 12979 (March 16, 1999) (where the Department found that because sales and volume figures were so small, both in absolute terms and in comparison with the period of investigation (''POI''), it could not conclude that the reviews were reflective of what the company's normal commercial experience would be without the discipline of an antidumping duty order).

Additionally, after consideration of the various comments that were submitted in response to the *preliminary results*, the Department continues to find that because Makita is not likely to sell subject merchandise in the United States below NV in the future, the continued application of the antidumping duty order is no longer necessary to offset dumping. As we stated in *Brass Sheet and Strip from Germany, Final Results of Antidumping Administrative Review and Determination to Revoke in Part*, 61 FR 49727, 49730 (September 23, 1996), ''[i]n prior cases where revocation was under consideration and the likelihood of resumption of dumped sales was at issue, the Department has considered, in addition to the respondent's prices and margins in the preceding periods, such other factors as conditions and trends in the domestic and home market industries, currency movements, and the ability of the foreign entity to compete in the U.S. marketplace without LTFV sales.'' *See also Brass Sheet and Strip from Canada: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Revoke Order in Part*, 63 FR 6519, 6523 (February 9, 1998).

Based upon the relevant factors in this case, we find that it is not likely that Makita will sell at less than NV if the order is revoked with respect to Makita and, therefore, the continued application of the antidumping duty order to Makita is no longer necessary to offset dumping. First, with regard to capacity utilization, the record establishes that Makita Japan has very limited remaining capacity in its Japanese facilities, while it has additional remaining capacity at Makita Corporation of America (''MCA''). Makita has made significant investments in its U.S. facility, and all evidence in the record indicates that MCA intends to produce PECTs in the United States for the long-term. The majority of the PECTs sold by Makita USA are now being produced in the United States. Moreover, as confirmed at verification, Makita has never shifted production of any tool from MCA back to Japan. Additionally, Makita Japan is currently producing only specialty PECTs for export to the U.S. market, and Makita Japan's existing production in Japan is primarily geared toward production for the home market. Furthermore, the record indicates that Makita Japan produces specialty PECTs to order and thus maintains low inventories of subject merchandise, another fact suggesting that Makita would be less likely to dump subject merchandise.

Second, with respect to specialty tools (imports from Makita Japan), Makita has consistently priced its products higher than its competition in the United States. Thus, the record indicates that Makita has not needed to lower prices of its Japan-produced tools in order to remain competitive or to maintain a consistent level of sales (*i.e.,* quantity). Although Makita has lost U.S. market share in recent years, it has maintained consistent annual sales in significant quantities.

Third, the record indicates that the electric power tool industry, including PECTs, in the United States and around the world is stable and/or growing (see August 2 Revocation Memorandum at 14–15). Based on our review of the record data, we found that this price stability characteristic of the electric power tool industry mitigates against the possibility of future dumping, as compared to other industries where market prices are volatile (*see* the Department's July 9, 1999, verification report at 34–39; the Department's July 13, 1999, verification report at 13–15; the August 2 Revocation Memorandum at 14–15).

Therefore, for the reasons discussed above and in our August 2 Revocation Memorandum at 11–15, we find that Makita Japan qualifies for revocation of the order on PECTs which it produces and exports to the United States under 19 CFR 351.222(e)(1)(ii).

We note that in response to the decision by a WTO Panel, the Department revised its revocation regulation. *See* United States—Anti-Dumping Duty on Dynamic Random Access Memory Semiconductors of One Megabit or Above From Korea, WTO Doc. WT/DS99/R (January 29, 1999). The new regulation replaces the ''not likely'' standard with a requirement that ''[t]he continued application of the antidumping duty order is no longer necessary to offset dumping'' now codified at 19 CFR 351.222(b). While this regulation was not yet in effect for purposes of this review, and thus does not apply to this case, we determine, as discussed above and in the comments outlined below, that continuation of the order with respect to Makita is no longer necessary to offset dumping.

Interested Party Comments

General

Comment 1: The Department's Grant of Constructed Export Price Offset

Makita argues that the Department's grant of a constructed export price (''CEP'') offset is in accordance with the law. Makita notes that because the petitioner stipulated to dismissal of its judicial challenge to the Department's grant of the CEP offset in the prior fourth antidumping duty administrative review, it may be assumed that the petitioner is no longer interested in pursuing the CEP offset issue for purposes of the current proceeding.

In response, the petitioner asserted that, although it stipulated to dismissal of prior litigation on this issue, it reserves its right to appeal the issue if and when it is finally resolved.

Department's Position: We agree with Makita that the Department's calculation of a *de minimis* margin, in particular the grant of a CEP offset as part of the level of trade (''LOT'') analysis, is in accordance with the U.S. antidumping law. As we explained in the final results for the previous fourth antidumping duty administrative review:

> The Department is continuing its practice, articulated in section 351.412(c) of its regulations, of making LOT comparisons for CEP sales on the basis of the CEP after adjustments provided for in section 772(d) of the statute. As stated in *Certain Stainless Steel Wire Rods from France: Final Results of Antidumping Duty Administrative Review,* 63 FR 30185 (June 3, 1998), we recognize that the Department's practice has been criticized by the CIT in *Borden, Inc.* v. *United States*. However, the decision in *Borden, Inc.* v. *United States*, is not final, and we believe our practice to be in full compliance with the statute and the regulations. Thus, we will continue to apply the methodology articulated in the regulations at section 351.412. *Professional Electric Cutting Tools from Japan Final Results of the Administrative Review*, 63 FR 54441 at 54444 (October 9, 1998) (Comment 2)

Accordingly, we have applied the methodology articulated in the regulations at section 351.412.

Comment 2: Criteria for Revocation Set Forth in the Department's Regulations

Makita argues that it has met the criteria for revocation set forth in the Department's regulations. Specifically, Makita states that: (1) It has made sales of subject merchandise for three consecutive years (*i.e.*, three PORs) at *de minimis* antidumping duty margins; (2) it agrees to reinstatement of the antidumping duty order (should dumping of subject merchandise resume) and has provided the requisite certifications set forth in the Department's regulations (*see preliminary results*, ''*Intent To Revoke*'' section, 63 FR at 43350 (August 10, 1999)); (3) it has made sales of subject merchandise in commercial quantities (*see* ''*Commercial Quantities*'' section below for further discussion); and (4) there is no likelihood that Makita will in the future sell the subject merchandise at less than NV (see *''Likelihood of Future Dumping''* section below for further discussion). Therefore, based on its fulfilment of the criteria outlined above, Makita argues that the Department should revoke the order with respect to PECTs that are produced by Makita Japan and that are also exported by Makita Japan.

The petitioner argues that Makita has not met the criteria for revocation set forth in the Department's regulations. Specifically, the petitioner states that: (1) Makita's sales of subject merchandise have not been in commercial quantities; and (2) Makita has not presented any compelling argument demonstrating that it is not likely to dump subject merchandise in the future.

Department's Position: We agree with Makita that it has met the Department's criteria for revocation set forth in its regulations. Specifically, Makita has met the following requirements: (1) Makita has made sales of subject merchandise for three consecutive years (*i.e.*, three PORs) at *de minimis* dumping margins; (2) Makita agrees to reinstatement of the antidumping duty order (should dumping of subject merchandise resume) and has provided the requisite certifications set forth in the Department's regulations (*see preliminary results*; ''*Intent To Revoke*'' section, 63 FR at 43350). In addition, we have determined that Makita has made sales of subject merchandise in commercial quantities (*see* ''*Commercial Quantities*'' section below for detailed discussion) in each of the three years of *de minimis* margins. Finally, we find that it is not likely that Makita will in the future sell the subject merchandise at less than NV (*see* ''*Likelihood of Future Dumping*'' section below for detailed discussion), and that the continued application of the antidumping duty order is no longer necessary to offset dumping. Therefore, the Department is revoking the order with respect to PECTs from Japan that are produced by Makita Japan and that are also exported by Makita Japan.

Commercial Quantities

Comment 1: Standard for Determining Whether Sales are Made in Commercial Quantities

The petitioner states that Makita has not met the threshold requirement of demonstrating that sales of subject merchandise were made in commercial quantities during the three PORs under review (*i.e.*, 3rd Administrative Review: 7/1/95–6/30/96, 4th Administrative Review: 7/1/96–6/30/97, and 5th Administrative Review: 7/1/97–6/30/98—hereafter ''3rd AR,'' ''4th AR,'' and ''5th AR''). The petitioner argues that Makita's sales during the three years under review are not representative of its normal commercial behavior, as is demonstrated by the disparity between pre-order and post-order subject merchandise sales volumes. The petitioner asserts that the Department is applying an incorrect standard by ignoring the disparity in pre-order and post-order sales volumes and is setting bad policy by finding sales in commercial quantities under the facts of this case. Specifically, the petitioner states that, consistent with prior determinations on revocation, the Department must consider both absolute and relative current sales volumes (i.e., post-order) in comparison to respondent's sales volumes prior to the order, because sales volumes subsequent to the order are meaningless without a pre-order benchmark. Thus, the petitioner claims that the Department erred in its preliminary results by considering sales volume only in absolute terms for determining whether sales were made in commercial quantities.

The petitioner argues that the Department's case history on commercial quantities determinations in the context of revocation has focused on absolute and relative sales volumes between the pre- and post-order periods. To support its argument, the petitioner

cites to cases where the respondent had zero or very few sales in absolute terms and the Department found that it did not meet the commercial quantities threshold (*see, e.g., Pure Magnesium from Canada,* 64 FR 12978 (March 16, 1999), and *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Review and Determination to Revoke in Part,* 64 FR 2173, 2175 (January 13, 1999) (hereafter ''*Corrosion-Resistant Steel from Canada*''). The petitioner also cites to a case where respondent had 35, 45, and 70 percent of its pre-order relative sales volumes during the three consecutive PORs without dumping and the Department concluded that these sales volumes met the commercial quantities threshold (*i.e., Silicon Metal from Brazil: Preliminary Results, Intent to Revoke in Part, Partial Rescission of Antidumping Duty Administrative Review, and Extension of Time Limits,* 64 FR 43161, 43162 (August 9, 1999) (hereafter ''*Silicon Metal from Brazil*'')). The petitioner states that although Makita had more than a few sales in absolute terms, Makita's sales history is not analogous to *Silicon Metal from Brazil* case cited above. Therefore, as a matter of policy, as a matter of consistency, and due to the importance of the comparative standard used in determining normal commercial activities, the petitioner maintains that Makita's sales volumes cannot be considered satisfactory.

The petitioner disagrees with the Department's finding in the preliminary results that, ''[a]lthough Makita's sales to the United States have decreased substantially since the imposition of the antidumping order, its exports to the United States remain significant. * * * Thus regardless of the decrease in shipments during the course of this proceeding, * * * Makita is currently selling in commercial quantities.'' (*See* August 2 Revocation Memorandum at 10.) Specifically, the petitioner claims that sales volume during the POI must be considered when ascertaining whether the company's current sales reflect normal commercial practice, because the POI provides the only time period for which there is evidence concerning the respondent's commercial behavior without the discipline of the antidumping duty order. *Citing Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Preliminary Results of Antidumping Duty Administrative Reviews, Intent to Revoke in Part, Intent to Not Revoke in Part, and Rescission of Review in Part,* 64 FR 45228, 45230 (August 19, 1999) (hereafter ''*Corrosion-Resistant Carbon Steel Flat Products from Canada*'') (where the Department found that sales were not in commercial quantities when the respondent's sales volumes for the current POR were only 0.173 percent of the POI sales volumes); and *Pure Magnesium from Canada,* 64 FR 12977, 12982 (March 16, 1999) (where the volume of subject merchandise sales sold in each year under review was less than 0.5 percent of the volume sold prior to the imposition of the order). Thus, the petitioner claims that because the volume of Makita's subject merchandise sales sold in each year under review was one percent or less than the volume sold prior to the imposition of the order, the Department cannot reasonably conclude that the consecutive *de minimis* margins are reflective of Makita's normal commercial experience in this case. Additionally, the petitioner argues that the Department cannot declare an amount to be ''significant'' (*i.e.,* current sales volume) without having some comparison or benchmark to provide context; in other words, ''significant'' must be relative to some defensible benchmark (*See Shakeproof Assembly Components* v. *United States,* Slip Op. 99–70 at 6 (CIT July 29, 1999) and *Taiwan Semiconductor Industry Ass'n* v. *United States,* Slip Op. 99–57 at 18 (CIT June 30, 1999).)

Additionally, the petitioner maintains that Makita's current sales activity (post-order) does not reflect the company's normal commercial activity (pre-order), because Makita's recent exports to the United States consist only of low-sales-volume, ''specialty'' PECT models (*i.e.,* not high-sales-volume, non-specialty PECT models), which are sold at relatively high prices. The petitioner argues that Makita's pre-order subject merchandise exports represented a full range of PECT models sold in significant quantities, rather than just ''specialty'' PECT models. Thus, the petitioner argues that Makita's post-order ''specialty'' PECT sales are not reflective of the company's normal pre-order commercial activity. The petitioner further contends that Makita's total number of PECT sales dropped considerably while Makita's sales of other non-subject power tools (*i.e.,* drills, sanders, and grinders) remained consistent, thus indicating that Makita's current sales of subject merchandise are not reflective of its normal commercial activity.

Makita states that its sales from the 3rd through the 5th ARs represent Makita's normal commercial behavior and reflect significant, consistent sales volumes. In addition, Makita argues that its current sales volumes continue to exhibit substantially the same range of specialty PECTs that were exported in 1992, prior to the imposition of the antidumping duty order, and that nothing has changed in regard to its specialty PECT exports.

Furthermore, Makita argues that it is not necessary to rely on pre-order sales volumes in this case in order to ascertain Makita's normal commercial practice, emphasizing that the Department cannot ignore the fact that Makita has established a permanent U.S. production facility that now manufactures the majority of Makita's PECT production for the U.S. market. Thus, Makita asserts, the subject merchandise that was previously produced in Makita's facility in Japan (pre-order) is now being manufactured in the United States. As a consequence of this substantial and permanent change in the company's business practice, which occurred in 1993, Makita stresses that pre-order export levels cannot properly represent current commercial activity.

Makita further notes that because it has permanently shifted the production of its high-sales-volume, ''non-specialty'' PECTs from Makita Japan to its U.S. production facility (i.e., MCA)), it is unlikely that Makita will ever again achieve 1992 pre-order sales quantities of PECTs that are produced in Japan. Thus, Makita argues that if the Department were to apply the petitioner's suggested requirement for commercial quantities, Makita could never obtain a revocation of the order. In effect, Makita argues, no company that shifts its production to the United States would ever be able to seek revocation. Makita further argues that the Department has considerable discretion in determining whether sales were made in commercial quantities and that the Department's preliminary finding in this case was in fact consistent with another recent decision issued by the Department. *Citing Notice of Preliminary Results of Antidumping Administrative Review and Intent to Revoke Order in Brass Sheet and Strip from the Netherlands,* 64 FR 48760, 48765, (September 8, 1999) (hereafter ''*Brass Strip from the Netherlands*''), Makita states that its change in commercial practice is similar to the circumstances in that case, where the respondent acquired a U.S. production facility and shifted significant production to the United States. Makita notes that, in *Brass Strip from the Netherlands,* the Department determined that the respondent's U.S.

sales were made in commercial quantities, despite a decline in exports, based on the Department's finding that the acquisition of the U.S. facility represented an ''unusual occurrence'' that significantly altered the company's commercial practice. Makita further argues that, *in Brass Strip from the Netherlands,* the Department stated that it is reasonable to conclude that the company's commercial practices were permanently changed when its subject merchandise production shifted to its U.S. facility, thereby making the date of the production shift, rather than the pre-order period, the appropriate benchmark for measuring whether respondent's sales during the three years without dumping were made in commercial quantities.

Makita stresses that it is not necessary to consider pre-order sales volumes, if the more current data provides the Department with appropriate information for determining Makita's normal commercial behavior. Makita argues that the Department's practice regarding the determination of commercial quantities must be applied on a case-by-case basis and that there are no set guidelines, commercial standards, or policies setting forth precise minimum sales quantities or permissible percentage changes in those quantities that are needed to determine a respondent's normal commercial behavior. Makita argues that this case is different from the cases cited by the petitioner (*i.e., Pure Magnesium from Canada, Corrosion-Resistant Steel from Canada, Corrosion-Resistant Carbon Steel Flat Products from Canada,* and *Silicon Metal from Brazil),* noting that none of the cases cited involved a major shift in production of subject merchandise. Additionally, Makita argues that the petitioner's citation to *Shakeproof Assembly Components* v. *United States* and *Taiwan Semiconductor Industry Ass'n* v. *United States* is not persuasive because those cases involved decisions by the International Trade Commission (''ITC''), rather than the Department of Commerce.

Makita also argues that there is a sound basis on which to evaluate what the Department means when it uses the term ''significant'' with respect to Makita's volume of export sales to the United States in this review. Specifically, Makita notes that by defining the relevant universe of subject merchandise imports as specialty PECTs only, then its sales of the 16 specialty PECTs in the post-order period have unquestionably been consistent and significant in relation to pre-order sales of the same 16 models.

Finally, in response to the petitioner's argument that the Department should decide this case in a manner consistent with other revocation cases, Makita states that this is precisely what the Department did, *i.e.,* the Department based its decision on Makita's normal commercial practices. Makita argues that if the Department could not consider a significant and long-term change in business practice (*i.e.,* shifting high-volume PECT production to a U.S. production facility (MCA)), Makita would forever be locked into the order. According to Makita, any changes in the way Makita did business that resulted in lower volumes of imports would result in an indefinite continuation of the order, thereby rendering the revocation provision meaningless for Makita.

Department's Position: We agree with the petitioner that in order to form the basis for a revocation determination, past margins must be reflective of the company's normal commercial activity. *See Corrosion-Resistant Steel from Canada.* Sales during a POR which, in the aggregate, are of an abnormally small quantity do not generally provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping. *Id.; see also Pure Magnesium from Canada* at 12979 (''These sales and volume figures are so small, both in absolute terms and in comparison with the period of investigation, that we cannot reasonably conclude that the zero margins [respondent] received are reflective of the company's normal commercial experience.''). However, the determination as to whether or not sales volumes are made in commercial quantities is made on a case-by-case basis, based on the unique facts of each proceeding. Neither the statute nor the regulations prescribes a specific standard for determining whether sales have been made in commercial quantities. For example, we have specifically found in prior cases that although one or two sales is not generally sufficient to meet the threshold, a sales drop-off after the imposition of an antidumping duty order does not necessarily prevent revocation (*see, e.g., Pure Magnesium From Canada; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part* 64 FR 50489, 50490–Comment 1, 50492–Comment 4 (September 17, 1999) (hereafter ''*Pure Magnesium from Canada 2*'') (where one or two sales was not consistent with normal commercial practice; also stating that a sales drop-off after imposition of the order does not necessarily prevent revocation). *See also Corrosion-Resistant Steel from Canada* (although one sale during the POR was insufficient, several thousand sales during another POR was distinguishable); and *Brass Strip from the Netherlands,* 64 FR 48760, 48765 (September 8, 1999) (respondent provided a commercially acceptable explanation of why exports of subject merchandise had declined).

In this case, we agree with Makita that its sales volumes during each of the three years under consideration were significant. Unlike in prior cases where the Department did not revoke because the respondent did not meet the basic threshold requirement of sales made in commercial quantities, in this case, Makita made thousands of sales during each POR to hundreds of different customers (*see* August 2 Revocation Memorandum at Attachment 2 and Makita's October 26, 1998 section C response at Appendix C–2). Compare Corrosion-Resistant Steel from Canada (sales were not in commercial quantities where respondent only had *one sale* during the POR); *Pure Magnesium from Canada* (sales were not in commercial quantities where respondent had *one sale* in two of the relevant years and *two sales* in the other). Thus, this case is distinguishable from other cases where the respondents only had one or two sales during the relevant PORs. Moreover, although Makita's aggregate subject merchandise PECT sales have decreased since the imposition of the antidumping order, that decrease relates to products that Makita now produces in the United States. Makita continues to export from Japan significant quantities of ''specialty'' PECTs, the only PECT models not produced in the United States, and these quantities are significant relative to pre-order (1992) sales of the same models.[1]

Furthermore, sales during the three years in question are reflective of the company's normal commercial experience since the establishment of its production facility in the United States. The record indicates that the U.S. production facility now manufactures volumes of merchandise comparable to

[1] Makita's history of specialty PECT sales is as follows: Makita's 1993 sales of specialty PECTs were 00.00% of its 1992 sales of specialty PECTs. Makita's 1994 sales of specialty PECTs were 38.39% of its 1992 sales of specialty PECTs. Makita's 1995 sales of specialty PECTs were 38.60% of its 1992 sales of specialty PECTs. Makita's 1996 sales of specialty PECTs were 47.18% of its 1992 sales of specialty PECTs. Makita's 1997 sales of specialty PECTs were 42.17% of its 1992 sales of specialty PECTs. Makita's 1998 sales of specialty PECTs were 50.86% of its 1992 sales of specialty PECTs. (See August 2 Revocation Memorandum at Attachment 2).

what was previously being manufactured by Makita Japan. This significant change in business practice provides a logical commercial explanation for Makita's relative drop in subject merchandise sales.

In the preliminary results of *Brass Strip from the Netherlands,* we evaluated whether the volume of sales prior to the order was the proper benchmark for measuring whether a respondent's sales volumes during the three years without dumping were made in commercial quantities, where the respondent acquired a U.S. manufacturing facility (subsequent to the imposition of the order) and had shifted a substantial portion of its production of subject merchandise to the United States. In *Brass Strip from the Netherlands* at 48765–48766, we found that this ''unusual occurrence'' provided sufficient reason to re-evaluate the benchmark. We stated:

> Although both the quantity and number of [respondent]'s shipments to the United States of subject merchandise have decreased since the imposition of the antidumping duty order, we find that the . . . acquisition of [the U.S. facility] and the subsequent transfer of in-scope radiator strip production to the United States is reflective of the type of ''unusual occurrence'' contemplated by the Department, in promulgating its regulations, as an acceptable explanation of why exports of subject merchandise have declined. Prior to this acquisition, . . . [respondent] continued to ship in similar quantities to the pre-order period and the subsequent cessation of shipments until 1995 was the immediate result of the 1991 acquisition. Based upon these circumstances, it is reasonable to conclude that the company's commercial practices were permanently changed in 1991, and that 1991, rather than the pre-order period, should be the benchmark for measuring whether the company's sales during the three years without dumping were made in commercial quantities.

Thus, as indicated in *Brass Strip from the Netherlands,* in order to ascertain a corporation's ''normal commercial practice'' with respect to shipment volumes, where necessary, we will evaluate the most appropriate benchmark. We recognize that in most cases, sales of subject merchandise sold prior to the imposition of the order will provide the most relevant benchmark. However, in unusual instances, such as those in this case, flexibility may be warranted in order to properly evaluate the company's normal commercial practice. In this instance the record indicates that Makita made the long term, if not permanent, decision to shift its production of non-specialty PECTs to the United States in 1993. Thus, while the sales levels prior to the imposition of the order provide an appropriate benchmark for analyzing sales volumes of specialty PECTs—this benchmark is no longer relevant to sales volumes of non-specialty PECTs. As such, we have compared Makita's sales volumes of specialty PECTs prior to the imposition of the order with those in the post-order period and, as stated above, after considering all relevant factors, found the latter to be significant.

Additionally, as we stated in *Pure Magnesium from Canada* 2 at 50492, a sales drop-off after imposition of the order does not necessarily prevent revocation. The Department explained:

> The Department's threshold requirement does not mean, as NHCI suggests, that the Department is effectively disqualifying companies from revocation if there is a sales drop off following the imposition of an antidumping order. The issue that is analyzed by the Department is the magnitude of the drop-off. In this regard, the Department has expressed its intent to revoke an antidumping duty order even where the sales drop-off has been substantial so long as the sales used to demonstrate a lack of price discrimination are reflective of the company's normal commercial experience.

Thus, the normal concern that accompanies decreased sales (i.e., that a low level of sales activity does not provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping) is not present here because there is an explanation as to why Makita has decreased sales of subject merchandise and current sales levels are significant. *Compare* with *Pure Magnesium from Canada* (where the Department could not reasonably conclude that the zero margins received by respondent were reflective of the company's normal commercial experience without the discipline of an order). For these reasons, we find that we can reasonably conclude that the *de minimis* margins calculated for Makita are reflective of the company's normal commercial experience and provide a reasonable basis for our decision to revoke. *See* August 2 Revocation Memorandum at 10–11.

Comment 2: Consideration of ''Changed Circumstances'' in the Context of Revocation

The petitioner states that the Department has improperly collapsed its revocation review pursuant to 751(a) of the Act with a changed circumstance review pursuant to 751(b) of the Act. The petitioner purports that the Department has done this without prior notice and therefore does not have the authority to do so. Citing the Department's August 2 Revocation Memorandum (at 4–5), the petitioner states that in its preliminary results of this AR the Department concluded that Makita's main argument supporting revocation is its ''changed circumstance'' in subject merchandise production (*i.e.,* Makita Japan's substantial investment in a U.S. production facility—MCA—and its PECT/power tool production shift from Makita Japan to MCA). The petitioner argues that the Department has been careful not to conduct a review under the guise of a changed circumstances review and that the Department has always given notice in the **Federal Register** when it does initiate a changed circumstance review (*citing Carbon Steel Plate from Korea: Final Results of Changed Circumstances Administrative Review and Revocation of Antidumping Duty Order* 51 FR 13042 (April 17, 1986); and *Certain Dried Heavy Salted Codfish from Canada; Initiation and Preliminary Results of Changed Circumstances Administrative Review; Consideration of Revocation; and Intent to Revoke Antidumping Duty Order* 54 FR 41479 (October 10, 1989)). Therefore, the petitioner argues that by considering MCA as a factor for revocation, the Department is effectively conducting a changed circumstances review without proper notice, and is thus violating its statutory and regulatory obligations.

Makita states that the Department did not convert the revocation proceeding to a changed circumstances proceeding. Makita stresses that the fact that some of the Department's preliminary findings could also have been used in a changed circumstances review does not turn the revocation proceeding into a changed circumstances review. Makita notes that at no point did the Department indicate that its decision to revoke was based simply on ''changed circumstances.'' Rather, according to Makita, the Department considered the establishment of MCA as a relevant factor regarding Makita's normal business practices and its applicability toward satisfying the commercial quantities threshold.

Department's Position: This administrative review has been conducted under section 751(a) of the Act; it is not a ''changed circumstances'' review under section 751(b). The difference between these two types of proceedings is primarily procedural. A section 751(a) review is conducted any time the Department receives a request for review in the anniversary month. Moreover, the regulations specifically provide that, if certain criteria are met, parties may request revocation at the time they request an administrative review under section 751(a) (*see* 19 CFR 351.222(e)). In contrast, a 751(b) review

is conducted any time the Department determines that there are changed circumstances sufficient to warrant review. Revocation can also be considered in the context of a 751(b) review (*see* 19 CFR 351.222(g)).

Although changed circumstances may warrant a review under section 751(b), nothing precludes the Department from considering facts relating to changed circumstances in the context of a section 751(a) review. In fact, the Department must consider all facts of record that are relevant to an issue under consideration in a section 751(a) review, whether it be an issue related to a margin calculation or to a request for revocation. However, the character of the review does not change simply because some of the facts considered relate to changes in the way a company conducts business.

Makita's establishment of MCA and its subsequent transfer of production to the United States is a relevant fact that cannot be ignored in the Department's revocation analysis. Indeed this fact could be characterized as a significant ''changed circumstance'' as was stated in the preliminary results. This characterization of the record facts, however, does not alter the nature of the proceeding. The petitioner, who has participated throughout this 751(a) review, has been afforded full notice and opportunity to provide evidence and comment regarding the issue of revocation generally and the impact of the shift in production specifically. The petitioner, in fact, has commented extensively on these issues.

Comment 3: Five Percent Market Viability Test and Commercial Quantities Determination

The petitioner argues that the Department's commercial quantities determinations in the context of revocation should be consistent with its policy in determining market viability under 19 CFR 351.404(b). The petitioner states that the Department's five percent viability standard is an appropriate benchmark to use because the requirement that NV be based on home market (or third country market) sales of a certain quantity and the commercial quantities standard are similar. The petitioner states, based on this comparison, that sales quantities in the U.S. market that are less than five percent of pre-order sales should not be considered representative to calculate margins for purposes of revocation.

Regarding the petitioner's argument that the Department's revocation determinations should be consistent with its home market viability determinations, Makita states that the five percent test for home market viability is designed for an entirely different purpose and has little applicability to the determination of commercial quantities in revocation. According to Makita, given the many years (six years at minimum) that typically intervene between the pre-order period and the revocation determination, any fixed, pre-determined percentage would not allow for significant changes in commercial practice. Additionally, Makita purports that by rejecting home markets where the quantity of sales is less than five percent of the U.S. export quantity, the Department is in no way suggesting that such sales are not made in commercial quantities.

Department's Position: We agree with Makita that the five percent test for home market viability is not relevant to the determination of commercial quantities in a revocation proceeding. The purpose of the viability test is to identify the most appropriate market in which to determine the NV of the subject merchandise, which is an issue that must be decided very early in the proceeding. That issue lends itself to a rule of general applicability and a general rule facilitates the requisite early decision. In contrast, for revocation, the issue is whether a company's sales during the three years in question provide a reasonable and reliable basis for determining that continuation of the order with respect to that company is no longer necessary to offset dumping. This is a more complex issue and a threshold matter in the context of the revocation decision. Thus, a general rule on the level of sales is inappropriate; it is an issue that can only reasonably be decided on a case-by-case basis.

Likelihood of Future Dumping

Comment 1: History of Dumping

The petitioner states that Makita's history of dumping, as evidenced by the imposition of the antidumping duty order, illustrates that Makita has to dump in order to compete effectively in the U.S. market, and that Makita will resume dumping if the Department revokes the order. The petitioner notes that Makita's drop in subject merchandise sales since the imposition of the antidumping duty order (*i.e.,* in terms of total number of models, total number of units, and loss of market share) has been substantial based on the Department's preliminary analysis. Thus, the petitioner states that revoking the order now would provide little commercial benefit to Makita unless Makita intends to resume selling higher volumes of subject merchandise in the United States at dumped prices.

The petitioner also argues that Makita will resume dumping subject merchandise in the future if the order is revoked because Makita has continued dumping non-subject tools (*i.e.,* professional electric sanding-grinding tools (''PESGTs'')). The petitioner purports that Makita's normal pattern of production and trade are presumptively reflected in its non-subject tool sales and therefore Makita's trade in PECTs will match its trade in PESGTs if the order is revoked. Based on its analysis of Makita's PESGTs sales, the petitioner maintains that Makita has not stopped dumping its PESGTs in the U.S. market since the time of the antidumping duty investigation (*see* pages 7–13 of the petitioner's September 10, 1999, case brief).[2] In addition, the petitioner states that, based on Makita's admission, PESGTs are not materially different from PECTs. According to the petitioner's analysis, Makita has continued dumping its PESGTs at a 46 percent margin during the PORs that are the subject of this revocation inquiry. Therefore, the petitioner states that continued dumping of non-subject tools provides a clear indication that Makita would likely resume dumping subject merchandise if the antidumping duty order were revoked.

Finally, the petitioner asserts that Makita has an incentive to resume dumping of its low-sales-volume, specialty PECTs that it has been importing into the United States during the pre- and post-order periods. The petitioner states that Makita's sales of specialty PECTs have decreased by 50 percent since 1992, as a result of increasing its prices on specialty PECTs in response to the antidumping duty order. Thus, the petitioner argues that there is incentive for Makita to resume dumping of subject merchandise (*i.e.,* specialty PECTs).

Makita disagrees, stating that the facts alleged by the petitioner do not show any history of dumping by Makita, but only show a history of accusations that Makita engages in dumping. Makita states that the petitioner's allegation is not supported by any evidence in the record because the Department has found that Makita has not dumped subject merchandise for three years. Makita maintains that its losses in market share are not compelling

[2] Note: PESGTs were investigated as subject merchandise during the original less-than-fair-value investigation of PECTs. However, the ITC determined that there was no material injury to the U.S. industry for these products. Consequently, no antidumping duty order was imposed on PESGTs from Japan.

evidence that it is likely to dump if the order is revoked, especially since, in Makita's opinion, increases in the petitioner's U.S. market share have resulted from predatory pricing techniques, which also explain Makita's decreased market share. Makita states that its subject merchandise sales business is not predicated on a particular market share in order to effectively compete in the United States. More importantly, Makita points out that most of its U.S. PECT sales are not subject merchandise, but are U.S.-MCA-produced PECTs. Therefore, Makita maintains that it does not need to dump its sales of subject merchandise (*i.e.,* low-sales-volume, specialty PECTs) in order to maintain its U.S. market share because most of its PECTs for the U.S. market are produced at MCA.

Further, Makita argues that the petitioner's assertion that revocation will only benefit Makita by facilitating its resumption of dumping is inaccurate. Makita states that revocation of the order will have the following benefits: (1) Removal of the stigma associated with being the subject of an antidumping duty order; (2) resumption of sales to U.S. customers who will not purchase tools that are subject to an antidumping duty order; and (3) elimination of expenses involved with participation in the Department's administrative reviews. Thus, Makita asserts the petitioner has presented no positive rebuttal evidence which can overcome the presumption that, if the order is revoked, there is no likelihood that Makita will resume dumping in the future.

Regarding the petitioner's argument that Makita's continued ''dumping'' of non-subject power tools is probative of future dumping of subject merchandise, Makita contends it is unpersuasive because Makita's sales of non-subject merchandise are irrelevant and outside the scope of this proceeding. Makita argues that a comparison of its subject merchandise sales with its non-subject merchandise sales is nowhere recognized as a relevant test of any likelihood of future dumping of subject merchandise. Makita purports that the petitioner misrepresents Makita's comments regarding the distinctions between PESGTs and PECTs. Makita states that it never claimed that there are no differences between PESGTs and PECTs, but that there is a substantial commonality in components, production machinery, manufacturing processes, and assembly of the two tool categories. Thus, Makita states, there are no relevant production-related distinctions between PESGTs and PECTs that would prompt Makita to keep production of either tool category in Japan or the United States. Makita contends that the petitioner's argument which seeks to compare Makita's pricing and production policies on PESGTs (non-subject merchandise) and PECTs (subject merchandise) in the context of analyzing the likelihood of future dumping of the latter, is not founded in Department precedent. Thus, Makita states that the petitioner's argument lacks relevant evidence rebutting the Department's presumption that Makita is not likely to dump in the future.

Regarding the petitioner's argument that Makita is likely to resume dumping of specialty PECTs to regain market share, Makita states the following: (1) Its current sales volumes of specialty PECTs are not inconsistent with its historical sales volumes; (2) it does not need to lower the price of specialty PECTs because of its premium pricing strategy; and (3) it has flexibility in the amounts by which it can lower prices on specialty PECTs (should Makita choose to) before dumping occurs. Specifically, Makita argues that its sales of specialty PECTs have always been limited and have fluctuated from year to year. Makita states that the record shows that it is engaged in premium pricing of its specialty PECTs, where it restricts the supply of a tool category in order to maintain its higher price quality image, but that there is no evidence on the record showing that Makita intends to regain market share through reduced prices. In addition, Makita states that it has significant room in which to lower its specialty PECT prices before dumping occurs and this shows that Makita has not increased prices on specialty PECTs simply to avoid dumping.

Department's Position: We disagree with the petitioner's contention that Makita's history of dumping PECTs, prior to the 3rd AR of this proceeding, illustrates that dumping is a necessary part of Makita's competitive position in the U.S. PECT market. As a threshold matter, the Department's revocation analysis focuses on the three most recent review periods. The Department generally finds that three consecutive years of non-dumped sales in commercial quantities indicates that a company will not dump in the future. *See Corrosion-Resistant Steel from Canada* at 2175 (''in evaluating the issue of likelihood, the Department has considered three years of sales in the United States with no dumping margins, plus an agreement to reinstatement [of] the order, to be indicative of expected future behavior.''). Thus, where there is no evidence to the contrary, the Department will normally determine that revocation is warranted. *See also Furfuryl Alcohol From the Republic of South Africa; Preliminary Results of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Order,* 64 FR 10983, 10894 (March 8, 1999); *Titanium Sponge from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review and Partial Revocation,* 63 FR 47474, 47475 (September 8, 1998); *and Steel Wire Rope From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order,* 63 FR 17986, 17988 (April 13, 1998) (hereafter *Steel Rope from Korea*). Makita has satisfactorily established that it has sold subject merchandise in commercial quantities at fair value for three consecutive years. Absent evidence to the contrary, the Department presumes that three years of *de minimis* or zero margins is indicative of Makita's future behavior (*see* August 2 Revocation Memorandum at 11).

We also disagree with the petitioner's allegation that Makita's continued dumping of non-subject power tools (including both U.S.-made and Japanese-made non-subject merchandise) is probative of future dumping of subject merchandise in this case. Generally, information regarding non-subject merchandise is irrelevant to whether an existing order continues to be necessary to offset dumping of the subject merchandise. The information provided by the petitioner does not warrant an exception in this case and thus cannot provide a basis for rebutting the presumption established by three consecutive years of sales of the subject merchandise at not less than fair value. Although the petitioner did not submit its allegation regarding Makita's pricing of non-subject merchandise in time for the Department to consider it for purposes of the preliminary results, the Department preliminarily indicated that pricing of non-subject merchandise might be a relevant factor in its analysis and that it may consider the petitioner's information for purposes of the final results (*see* August 2 Revocation Memorandum at page 16). However, as discussed above, the Department finds that in this case, the information on sales of non-subject merchandise is irrelevant for purposes of this final revocation determination. Therefore, the Department's revocation decision in this case is based only on the facts related to the subject merchandise sales alone.

The Department further disagrees with the petitioner's allegation that Makita will resume dumping to regain lost share of the PECT market. Evidence

on the record indicates that Makita has suffered continued losses in its market share in the ''electric power tool market'' as a whole (*i.e.,* all electric power tools including subject PECTs—*see* Makita's February 9, 1999, submission at Appendix 15). Therefore, if the petitioner's rationale (*i.e.,* dumping maintains market share) is to be considered accurate, one would have expected Makita to have maintained its market share in other categories of electric power tools, which the petitioner contends Makita has continued to dump, while only losing market share in PECTs. This in fact is not the case, as Makita has lost market share in other electric power tool categories as well. Thus, it is clear there are other factors that impact a competitor's position in the market (*e.g.,* introduction of a new competitor, innovations, reputation). Therefore, we agree with Makita that its sales of subject merchandise are not predicated on a particular market share in order to effectively compete in the United States.

Comment 2: Home Market Demand

The petitioner states that declining home market sales and home market demand (*i.e.,* decline in the Japanese electric power tool market and Japanese housing starts from 1997–1998), coupled with rising demand in the United States, have increased the likelihood that Makita will dump PECTs in the U.S. market in the future. The petitioner submits that the evidence in the record contradicts the Department's finding of market stability in Japan. Therefore, the petitioner maintains that with Makita's declining sales in the home market, Makita has greater incentive to direct its PECT sales to the U.S. market.

Makita stresses that although there have been fluctuations in its home market electric power tool sales and Japanese housing starts, the petitioner is confusing short-term fluctuations in an otherwise relatively stable home market with a permanent decline in demand for electric power tools (*i.e.,* from 1992 to 1997). In addition, Makita states it has no incentive to increase exports from Japan because most of its tools sold in the U.S. market are produced in the United States (*i.e.,* MCA), and that its focus is to increase production at MCA rather than increase production in Japan. Moreover, Makita states that it has many other viable markets, other than the United States and Japan, where Makita Japan sells its cutting tools, thereby reducing its financial dependance on Japanese exports to the United States. Furthermore, Makita maintains that it would not be practical for Makita Japan to export subject merchandise that would, in effect, be competing with MCA's production of PECTs.

Department's Position: We agree with Makita that a stable home market does not require an absence of market fluctuations, and that the evidence on the record pertaining to the health of the Japanese home market does not suggest that Makita is likely to dump PECTs in the U.S. market in the future if the order were revoked. Although the petitioner claims that the Japanese power tool market is in decline, we find that the record data indicates that the market in Japan is relatively stable (*see* August 2 Revocation Memorandum at 14). We do not conclude that the drop in housing starts in Japan and home market demand for subject merchandise between fiscal year (''FY'') 1996 and FY 1997 indicates a declining or unhealthy market. Rather, we would expect even a healthy market, especially the electric power tool market, to experience both peaks and troughs in demand. Contrary to the petitioner's assertion, we have no evidence that suggests that the above mentioned one-year decline in the Japanese power tool market is a long-term occurrence. Therefore, based on the evidence as a whole, we find the Japanese power tool market to be relatively stable.

In addition, the record supports Makita's assertion that it is unlikely to increase its PECT exports from Japan to the United States to pre-order levels because most of its tools sold in the U.S. market are now produced in the United States by MCA. This conclusion is particularly evident when reviewing Makita's production capacities in both the U.S. and home markets, i.e., Makita has substantial excess capacity available in the United States and is producing at full capacity in Japan. (See Comment 3 of this section below for further discussion.) Furthermore, it is unlikely that Makita Japan will resume its pre-order export levels of subject merchandise because such exports would be competing with MCA's production of PECTs, or would require costly shifts in PECT production back to and restructuring of capacity utilization in Japan (see the Department's July 9, 1999 verification report at 22–23, 34–36; and July 13, 1999 verification report at 4–7). Finally, we verified that Makita has other viable markets, other than the United States and Japan, wherein Makita Japan can sell its cutting tools (see the Department's July 9, 1999, verification report at 36–40). Thus, Makita Japan is not dependant on Japanese exports to the United States for financial viability. As such, based upon the data on the record regarding the Japanese and U.S. PECT markets, the existence of Makita's U.S. production facility, the available or lack of available production capacity levels in MCA and Makita Japan (*i.e.,* Okazaki plant), respectively, and Makita's healthy sales history in other world markets, we find that the sales pattern in the Japanese home market does not suggest that Makita is likely to resume dumping of PECTs in the United States without the discipline of the order.

Comment 3: PECT Production in Japan Versus the United States

The petitioner purports that Makita Japan could increase its production output with relative ease and despite its reported capacity utilization figures and thereby increase production of PECTs for sale in the U.S. market at dumped prices if the order is revoked. The petitioner argues that plant capacity is unrelated to production output because the annual production output at Makita's Okazaki plant has increased nearly 100 percent from 1992 through 1997, while its capacity utilization has remained constant during the same time period. Furthermore, the petitioner suggests that the Department has ignored its claim regarding the ease with which an electric power tool manufacturer can expand production. (*See* Declaration of Ronald S. Taylor, Black & Decker February 24, 1999, submission.) Finally, the petitioner argues that a manufacturing plant (*i.e.,* Makita's Okazaki plant) with easily modifiable assembly lines does not face the same barriers to expansion and conversion as other complex, more capital-intensive facilities with fixed, dedicated, and expensive equipment. Thus, the petitioner asserts that Makita's capacity in Japan can be easily and relatively inexpensively altered, resulting in increased PECT production in Japan for sale in the U.S. market at dumped prices if the order is revoked.

The petitioner also states that Makita USA's consolidated financial statements show poor performance for FYs 1997 and 1998 [3] and Makita's U.S. production facility MCA has utilized less than two thirds of its total production capacity. The petitioner argues that Makita's U.S. operations are a drain on the Makita corporation and that continued poor financial performance of Makita's U.S.

[3] The financial statements for Makita USA (Makita Japan's affiliated selling agent in the United States) and MCA (Makita's U.S. production facility) are consolidated for financial reporting purposes in the United States. The Makita USA/MCA consolidated financial statement is consolidated into Makita's overall corporate financial statement as well.

operations will render Makita's capital investments in MCA moot.

In addition, the petitioner states that the downward trend in the yen against the U.S. dollar (*i.e.,* depreciation of the yen against the dollar) suggests that production in Japan is and will become more profitable than production in the United States based on its estimation of Makita's cost of manufacturing in the United States verses Makita's cost of manufacturing in Japan. The petitioner argues that Makita would have increased its profits if Makita would have shifted its production back to Japan (*see* the petitioner's September 17, 1999, case brief at 18–19 and at Exhibit 6). Finally, the petitioner asserts that Makita's loss in U.S. market share gives Makita a financial incentive to concentrate its production of cordless tools (*i.e.,* PECTs) in Japan. Specifically, the petitioner claims that Makita has not participated meaningfully in the U.S. market for cordless saws, which are currently produced by MCA. Because cordless tools are not affected by voltage differences, the petitioner argues that if the order is revoked Makita will consolidate its cordless saw production in Japan in order to take advantage of its economies of scale and production experience in Japan. The petitioner argues further that Makita will have to adopt measures to regain market share which will include a resumption of subject merchandise sales at dumped prices, particularly in the popular and growing cordless PECT market. Thus, the petitioner asserts that Makita USA's poor financial performance, favorable currency fluctuations, and losses in U.S. market share all give Makita an incentive to resume dumping in the United States should the order be revoked.

Makita asserts that the Department correctly concluded that Makita Japan operates at the upper limit of the maximum volume that can be produced by its Japanese facility. Makita states that because it closed down its Anjo, Japan production facility and moved a portion of Anjo's production capacity into the Okazaki plant in 1997, the Department must consider the distinctions between Makita's prior and current production capacities, namely, its past capacity when its Okazaki and Anjo plants were open and producing PECTs in comparison to its current capacity where only a single plant (i.e., the Okazaki plant) is producing PECTs. Makita argues that when recognizing such significant differences, it is clear that the closing of the Anjo plant significantly reduced its production capacity and Makita Japan's ability to expand its capacity.

Makita argues further that whether or not it can set up new assembly lines in its Okazaki plant is not relevant to this segment of the proceeding. Makita states that assembly of new lines involves the construction of new capacity and not the utilization of current capacity. Makita maintains that in this segment of the proceeding the Department's focus should be whether Makita has idle capacity currently available to increase the output of subject tools for export. Makita states that evidence on the record suggests that no such additional capacity is available in Japan.

Regarding the petitioner's allegation that the Department has not considered the affidavit of Ronald S. Taylor, regarding the ease with which assembly lines can be added to Makita's Okazaki production plant, Makita states that the statements made in the affidavit are not applicable to Makita's business practices for the following reasons: (1) Makita's Okazaki plant does not have the floor space to add production; (2) substantial increases in capacity in Japan would include re-opening the Anjo facility and a reduction in capacity at MCA; and (3) returning production to Japan would be costly and difficult to implement. Thus, Makita argues that transferring production from MCA back to Japan is neither easy nor inexpensive, and that the affidavit does not fully address Makita's commercial situation because Makita's long-range business strategy includes the shifting of production closer to its international markets.

Furthermore, Makita argues that Makita USA is on the road to profitability and that MCA's operations have been profitable in 1997 and 1998. Makita argues that Makita USA's poor financial performance in FYs 1997 and 1998 and MCA's low capacity utilization does not support a return of production to Japan, but rather a reinforcement of its efforts to increase production at MCA (noting that Makita has made a substantial investment in MCA). In addition, if Makita's only business concern was cost of production, then, Makita states, it would be far more sensible for it to shift its production to the People's Republic of China where it already has a production facility rather than Japan. Makita argues that Makita USA's poor financial performance is not unexpected in a situation where a still-expanding U.S. subsidiary (*i.e.,* MCA) is operating below its capacity. Makita asserts that MCA is still growing toward its role as the main provider of electric power tools in the U.S. market and that Makita's continued investment in the facility indicates Makita's continued commitment to expand MCA's role in the U.S. market. Thus, Makita contends that the establishment and strengthening of MCA is a long-term investment project on which it does not expect an immediate return.

In addition, Makita maintains that only when the value of the Japanese yen is decreasing against the U.S. dollar do currency fluctuations make its Japanese operations more profitable than its operations in the United States. Makita states that MCA was established, at least in part, in order to avoid dependancy on exchange rate fluctuations and the risks associated with them. Makita argues that the time frames (*i.e.,* June 1993 and June 1998) that the petitioner cites in its analysis were periods when the yen was weak against the dollar, but that in June 1995 and September 1999 when the yen was stronger, Makita's U.S. operations were more profitable. Notwithstanding these facts, Makita states that it has never conditioned its long-term strategy on short-term currency fluctuations, but on the premise that Makita is best served by eliminating the risks associated with the unpredictability of fluctuating exchange rates and by moving production from Japan to its local markets.

Finally, Makita states that the petitioner's argument that Makita has financial incentive to consolidate its production of electric power tools in Japan, particularly cordless PECTs, is based on the petitioner's incorrect assumption that Makita does not already produce cordless PECTs in the United States. Makita notes that it has been producing cordless PECTs at MCA for years, and has never found that production would be facilitated or improved if it was shifted back to Japan. Makita argues it has not forfeited its share of the U.S. cordless PECT market, but rather it has taken full advantage of the opportunity by establishing efficient operations that are close to its customer base in the U.S. market. Makita states that the petitioner has not presented any evidence supporting the argument that consolidation of cordless tool production in Japan would be more cost effective.

Department's Position. We agree with Makita that the record indicates an intent to maintain and/or increase production operations in the United States without increasing production in Japan. The record indicates that Makita has limited unutilized capacity in Japan, but available capacity in the United States. Makita's verified submissions demonstrate that Makita's facility in Okazaki, Japan (Makita's only remaining production facility for PECTs in Japan) is currently operating at full capacity,

and has been doing so since 1991. Two important facts that were considered in analyzing production capacity at the Okazaki plant are (1) the Okazaki plant (and the Anjo plant when it was open) has operated with two shifts only since 1996, and thus the Okazaki plant's capacity utilization figures were based on one production shift prior to 1996; and (2) Makita closed down its Anjo production facility and moved a portion of Anjo's production capacity (*i.e.,* production equipment including armature winding lines, assembly lines, armature shaft hardening machines) into the Okazaki plant in 1997, thereby bringing the Okazaki plant to its optimal production capacity. The addition of a production shift explains how Makita's Okazaki plant was able to increase its total annual production nearly 100 percent from 1992 through 1997, while its annual capacity utilization remained constant. Additionally, we verified that it would be difficult, if not impossible, for Makita to add a third shift in its Okazaki plant (*see* August 2 Revocation Memorandum at 14). In sum, comparing Makita's production capacity and total annual output when its Okazaki and Anjo plants were open and producing electric power tools with one shift each, with Makita's current production capacity and annual output at the Okazaki plant producing electric power tools with two shifts (*see* Appendix 4 of Makita's September 17, 1999, rebuttal brief and verification exhibit 13 of the Department's July 9, 1999 verification report), the Department finds that Makita Japan's total annual production output at the Okazaki plant using two production shifts since 1997 is comparable to Makita Japan's previous total annual production output at the Anjo and Okazaki plants using one production shift in each plant prior to 1997. In short, from 1992 through 1998, Makita Japan's annual production of electric power tools for each shift reflected Makita Japan's optimal capacity utilization. Thus, Makita Japan's production with two shifts at one plant (*i.e.,* Okazaki plant) is comparable to Makita Japan's production with one shift at each of the two plants (*i.e.,* Okazaki and Anjo plants).

We further note that although Makita USA's financial statement reports a poor performance for 1997 and 1998, the MCA plant operated profitably in 1998 (*see* the Department's July 13, 1999, verification report at 10 and 11, and verification exhibit 12). Moreover, there is nothing on the record to indicate that the entire financial loss is directly related to Makita's U.S. production of PECTs. Indeed, the Department recognizes there could be a number of explanations for Makita USA's poor financial performance in 1997 and 1998 (*e.g.,* accounting policies, long-term investment strategies, failed business ventures). There is nothing on the record indicating specifically what the losses are attributable to and, where the U.S. production operation has been profitable in 1998, the Department cannot make an assumption that the corporation would choose to cease such operations in order to increase profitability for a related entity. Additionally, Makita's statement regarding the expected growth of MCA provides a reasonable explanation for any losses incurred, *i.e.,* MCA is still growing toward its role as the main provider of electric power tools in the U.S. market and Makita continues to invest in the facility (*see* the Department's July 13, 1999, verification report at 9 and verification exhibit 12); thus it is reasonable to conclude that building up MCA is a long-term undertaking and Makita does not expect an immediate return on its investment.

Additionally, the record supports and we accept Makita's characterization as to the effect of currency fluctuations on Makita's decision to maintain production of PECTs at MCA (*see* Makita's September 17, 1999, rebuttal brief at 31–33). Given the many factors that can affect profitability during a time of currency depreciation, we cannot determine which operations (*i.e.,* Makita's Japanese operations or Makita's U.S. operations) will be more profitable as the petitioner suggests. However, a depreciation of the yen does not imply that dumping will occur. To the contrary, the Department notes that during a period of a depreciating home market currency, there is even less pressure to engage in pricing below NV. In this proceeding, there is no evidence on the record indicating the likelihood of a resumption of dumping due to the effect of a long-term depreciation of the yen against the dollar, which by itself does not indicate a likelihood of sales at less than fair value. *See Steel Rope from Korea* at 17988. Furthermore, Makita has demonstrated that there are a number of long-term business advantages in establishing a U.S. production facility including: (1) Makita's ability to avoid dependancy on exchange rate fluctuations and the risks associated with them; and (2) Makita's ability to respond to the needs of the U.S. market in a more timely fashion. Finally, evidence on the record supports Makita's long-term business practice of moving production from Japan to Makita's electric power tool markets abroad (*see* the Department's July 9, 1999, verification report at 22–23 and verification exhibit 6A).

Comment 4: Pricing Practices With Respect to Subject and Non-Subject Merchandise

The petitioner states that Makita's inability to undercut its U.S. competitors' prices with respect to PECTs it produces in Japan, coupled with its widespread undercutting of prices on U.S.-made PECTs and other non-subject tools, indicates the effectiveness of the order and the likelihood that Makita would resume dumping if the order were revoked. The petitioner states that if it were not for the order, Makita's prices for specialty PECTs imported from Japan would be lower than those of Makita's competitors. Therefore, the petitioner argues that by forcing Makita to maintain high prices, the order has resulted in Makita's devastating loss of U.S. market share in PECTs, and that Makita will have to lower its prices on PECTs as soon as the order is lifted in order to regain its lost market share.

Makita states that it has considerable room for dropping the price on its subject merchandise sales without incurring a dumping liability. Makita argues that it has not been forced to maintain higher prices on its Japan-made specialty PECTs due to the impact of the order, but has chosen not to lower its prices for marketing purposes (*i.e.,* Makita's marketing strategy entails producing a higher quality product that demands higher prices). Thus, Makita states that higher pricing is the result of its business strategy rather than the result of the impact to the antidumping duty order.

In addition, Makita argues that it has not undercut the petitioner's prices with respect to its U.S.-produced PECTs, and that Makita has in fact experienced drops in its market share of non-subject, U.S.-produced PECTs. Makita states that of the thousands of U.S.-produced PECT sales made every month, the petitioner has found only 10 PECT models on which to base its allegation of price undercutting. Makita argues that even if the petitioner's allegation were correct, the small number of tool models cited would amount to a *de minimis* margin. In response to the petitioner's allegation that market share is gained through undercutting competitors' prices, Makita reasons that if it had undercut its competitors' prices with its U.S.-produced PECTs, then it should have increased its share of the U.S. PECT market rather than lost it (as is the case since 1992). To the contrary, Makita

purports that petitioner undercuts Makita's prices in every case of which Makita is aware.

Department's Position: We disagree with petitioner. Regarding the petitioner's argument that Makita would undercut U.S. competitors' prices on PECTs if the order were revoked, the Department generally finds that three years of no dumping is predictive of future behavior. (*See Corrosion-Resistant Steel from Canada,* at 2175. Thus, where there is no evidence to the contrary, the Department will normally determine that continuation of the order is no longer necessary to offset dumping. Further, because Makita has agreed to reinstatement of the order in the event of future dumping, it is inappropriate to presume that the imposition of the order is the only factor preventing dumping. Rather, we considered other factors that might suggest a likelihood of future dumping as discussed in the ''*Determination to Revoke the Order in Part*'' and ''*Likelihood of Future Dumping*'' sections in this notice above.

Regarding the petitioner's argument that Makita's widespread undercutting of prices on U.S.-made PECTs and other tools is indicative of Makita's behavior in the absence of an order, the Department reiterates its position enumerated above in Comment 1 of the ''*Likelihood of Future Dumping*'' section of this notice. We disagree with the petitioner's allegation that the pricing of non-subject merchandise in this case is probative of whether the order continues to be necessary to offset dumping of subject merchandise.

Final Results of the Review

We determine that the following weighted-average margin for Makita exists for the period July 1, 1997, through June 30, 1998:

Manufacturer/producer/exporter: Makita Corporation Incorporated

Margin (percent): 0.07 percent (*de minimis*)

Effective Date of Revocation

This revocation applies to all entries of subject merchandise that are produced by Makita Japan and that are also exported by Makita Japan, entered, or withdrawn from warehouse, for consumption on or after July 1, 1998. The Department will order the suspension of liquidation ended for all such entries and will instruct the Customs Service to release any cash deposits or bonds. The Department will further instruct Customs Service to refund with interest any cash deposits on entries made after June 30, 1998.

Assessment

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. For entries of subject merchandise that are produced by Makita Japan and that are also exported by Makita Japan, entered, or withdrawn from warehouse, for consumption during the POR (*i.e.,* July 1, 1997–June 30, 1998), the Department will instruct the Customs Service to liquidate entries without regard to antidumping duties. The Department will order the suspension of liquidation ended for all such entries and will instruct the Customs Service to release any cash deposits or bonds with interest if applicable.

Cash Deposit Requirements

The following deposit requirements shall be required for merchandise subject to the order entered, or withdrawn from warehouse, for consumption on or after the publication date of this final results of the administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for Makita Japan will be zero, except that for imports of PECTs that are produced by Makita Japan and that are also exported by Makita Japan, cash deposits will no longer be required and the suspension of liquidation will cease for entries made on or after July 1, 1998; (2) if the exporter is not a firm covered in this review or the less-than-fair-value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered in this review or the LTFV investigation, the cash deposit rate will be 54.5 percent, the ''all others'' rate made effective by the LTFV investigation. These requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers and Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a final reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.105(a). Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of the APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 8, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–32673 Filed 12–20–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–810]

Certain Welded ASTM A–312 Stainless Steel Pipe From Korea: Extension of Time Limits for Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limits For Preliminary Results of Administrative Review.

EFFECTIVE DATE: December 21, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–0648 or (202) 482–3020, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Departments's regulations are to the current regulations, codified at 19 CFR part 351 (1999).

Background

On December 30, 1998, the Department of Commerce (the Department) received a request from

Avesta Sheffield Pipe Co.; Damascus Tube Division, Damascus-Bishop Tube Co.; and the United Steelworkers of America (AFL–CIO/CLC), herein referred to as ''the domestic industry,'' for administrative review of the antidumping duty order on certain welded ASTM A–312 stainless steel pipe from Korea. On January 25, 1999, the Department published its initiation of this administrative review covering the period of December 1, 1997 through November 30, 1998 (64 FR 3682).

Extension of Time Limits for Preliminary Results

Because of the reasons enumerated in the Memoranda from Joseph A. Spetrini to Robert S. LaRussa, *Extension of Time Limit for the Administrative Review of Certain Welded ASTM A–312 Stainless Steel Pipe from Korea,* dated December 13, 1999, it is not practical to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limits for the preliminary results to December 20, 1999. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: December 13, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary for AD/CVD Enforcement III.

[FR Doc. 99–33075 Filed 12–20–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

I.D. 121599C]

Socioeconomic Monitoring Program for the Florida Keys National Marine Sanctuary

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 22, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dr. Vernon R. Leeworthy, NOS/Special Projects Office, 1305 East West Highway, SSMC 4, 9th Floor, Silver Spring, Maryland 20910 (301–713–3000, ext. 138) or via Internet at Bob.Leeworthy@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this information collection is to add socioeconomic monitoring information to the ecological monitoring information in the Florida Keys National Marine Sanctuary (FKNMS). In 1997, regulations became effective that created a series of ''no take zones'' in the FKNMS. Monitoring programs are used to test the ecological and socioeconomic impacts of the ''no take zones''. This year three voluntary data collection efforts will be initiated to support the socioeconomic monitoring program.

The first collection involves a set of four panels on commercial fishing operations, where commercial fishermen will be interviewed to assess financial performance and assess the impacts of Sanctuary regulations. Information on catch, effort, revenues, operating and capital costs will be obtained to do financial performance analysis. Information on socioeconomic factors for developing profiles of the commercial fishermen such as age, sex, education level, household income, marital status, number of family members, race/ethnicity, percent of income derived from fishing, percent of income derived from study area, years of experience in fishing will be gathered to compare panels with the general commercial fishing population. The data would be collected annually.

The second collection will monitor recreational for-hire operations through the use of dive logs for estimating use in the ''no take areas'' versus other areas for snorkeling, scuba diving and glass-bottom boat rides. Volunteers will collect the logbooks monthly.

The third collection will survey all users of ''no take areas''. Respondents will be asked to rate both the importance and satisfaction with various natural resource attributes and characteristics (e.g., water clarity, coral cover, number and diversity of sea life, etc.).

II. Method of Collection

Interviews will generally be used. The user surveys will also include use of a mailed questionnaire. The dive shop logbook collection is a request to keep records.

III. Data

OMB Number: None

Form Number: None

Type of Review: Regular submission

Affected public: Individuals, business or other for-profit

Estimated Number of Respondents: 1,070

Estimated Time Per Response: 3 hours for commercial fishing panels, 10 hours for dive shops, and 20 minutes for sanctuary users.

Estimated Total Annual Burden Hours: 920

Estimated Total Annual Cost to Public: $0

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and /or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 10, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Chief Information Officer.

[FR Doc. 99–33063 Filed 12–20–99; 8:45 am]

BILLING CODE 3510–JE

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121599D]

National Marine Sanctuaries–Socioeconomic Impacts of Marine Reserves

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 22, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dr. Vernon R. Leeworthy, NOS/Special Projects Office, 1305 East West Highway, SSMC 4, 9th Floor, Silver Spring, Maryland 20910 (301–713–3000, ext. 138) or via Internet at Bob.Leeworthy@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this information collection is to give users of National Marine Sanctuaries fair representation in the process of creating a marine reserve (no-take zone). This will be accomplished by collecting socioeconomic information and incorporating the information into a geographical information system (GIS) that will support socioeconomic impact analyses. Socioeconomic Impact Analyses attempt to show who might be impacted by a marine reserve (i.e., who benefits and who suffers potential costs). Impacts are measured not only on direct users that would be displaced but also the secondary impacts such as income and employment in the local and regional economies and to consumer's through either higher prices for commercial fishing products or lower quantity and quality of recreational experiences. In FY 2000, NOAA plans to apply the information collection and analyses to the Channel Islands National Marine Sanctuary, which is revising its management plan and will propose the creation of a marine reserve.

One set of respondents would be commercial fishermen. Interviews would gather information on socioeconomic factors for developing profiles of the commercial fishermen such as age, sex, education level, household income, marital status, number of family members, race/ethnicity, percent of income derived from fishing, percent of income derived from study area, years of experience in fishing and years of fishing experience in the study area. Total catch, effort and revenue, by major species and by geographical areas, will also be compiled. Information on costs of operation and investment in the fisheries will also be obtained. Detailed maps will be used in working with fishermen to allocate their catch and effort geographically.

A second set of respondents would be Wholesale Processors. Personal interviews will be conducted with wholesale processors of commercial fishing catch to determine the disposition of catch (e.g. how much is exported out of the local area, how much is sold to local retail markets, and how much is sold to restaurant markets) and the price mark-ups at each market level.

The third set of respondents would be Recreational For-Hire Businesses. Personal interviews would be conducted with for-hire charter and party (head-boats) boat operations that take recreational fishermen, divers, and wildlife viewers to the Channel Islands National Marine Sanctuary. As with commercial fishing operations, maps will be used to allocate activity by geographic area. Information on number of passengers (normalized to person-days of activity), operating revenues, cost and profits will be obtained.

II. Method of Collection

Personal interviews.

III. Data

OMB Number: None
Form Number: None
Type of Review: Regular submission
Affected public: Business or other for-profit
Estimated Number of Respondents: 665
Estimated Time Per Response: 2 hours
Estimated Total Annual Burden Hours: 1,330
Estimated Total Annual Cost to Public: $0

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and /or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 10, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Chief Information Officer.

[FR Doc. 99–33064 Filed 12–20–99; 8:45 am]

BILLING CODE 3510–JE

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121499D]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a number of public meetings of its oversight committees in January, 2000 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held between Wednesday, January 5, and Friday, January 28, 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Meetings will be held in Warwick, RI, Portland, ME, Danvers, MA and Peabody, MA. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950–2866; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Wednesday, January 5, 2000, 10:00 a.m.—Gear Conflict

Committee Meeting

Location: Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739–3000.

Discussion and development of recommendations on whether fishing vessels should be required to use a Vessel Monitoring System (VMS) to reduce the incidence of gear conflicts between fixed and mobile gear fishermen; discussion of methods to implement a VMS requirement in fisheries that are not managed by the Council; and discussion of various management measures that can be used to mitigate gear conflicts, such as additional marking requirements.

Thursday, January 6, 2000, 9:30 a.m.—Whiting Committee Meeting

Location: Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739–3000.

Committee development of a scoping document for a proposed Small Mesh Species Fishery Management Plan (FMP), which would establish a separate plan for whiting, red hake, offshore hake, and possibly ocean pout. These species are currently managed under the Multispecies FMP. The scoping document may include options for limiting access and applying a Total Allowable Catch (TAC) to small mesh species fisheries, and any other issues that the committee identifies.

Monday, January 10, 2000, 10:00 a.m. and Tuesday, January 11, 2000, 8:30 a.m.—Scallop Oversight Committee Meeting

Location: Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739–3000.

Committee approval of Total Allowable Catch research set-aside mechanism and groundfish management issues relating to Framework Adjustment 13 to the Scallop FMP (scallop vessel access to groundfish closed areas); development of recommendations concerning the extension of the Seastead Site research project closed area (proposed Framework Adjustment 14 to the FMP); and approval of Amendment 10 objectives (comprehensive management strategy, including rotational area management), schedules and a draft scoping document.

Wednesday, January 12, 2000, 9:30 a.m.—Experimental Fisheries and Research Steering Committee

Location: Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500.

Development of research priorities for the New England groundfish fishery and other fisheries that impact the groundfish resource.

Thursday, January 13, 2000, 9:30 a.m.—Joint Herring Committee and Atlantic States Fisheries Commission Herring Section Meeting

Location: Holiday Inn by the Bay, 8 Spring Street, Portland, ME 04101; telephone: (207) 775–2311.

Committee and Section review and approval of a draft scoping document that identifies issues to be considered during the development of a controlled access system in the Atlantic herring fishery; Committee and Section consideration of the impact of the partial approval of the Atlantic Herring FMP and discussion of the need for additional management measures such as, but not limited to, spawning closures, effort controls, gear restrictions, or other measures for the fishery; Committee and Section discussion of gear use issues in the eastern Gulf of Maine, and possible development of additional management measures to address concerns raised by purse seine and mid-water trawl vessels that fish in this area.

Tuesday, January 18, 2000, 8:30 a.m.—Red Crab Committee Meeting

Location: Sheraton Ferncroft, 50 Ferncroft Road, Danvers, MA 01923; telephone; (978) 777–2500.

Discussion of issues to address in the scoping process for this new FMP, review of the draft scoping document and review of the draft control date letter to NMFS. There will be a closed session at the end of the meeting to review applications for the Red Crab Advisory Panel.

Friday, January 28, 2000, 9:30 a.m.—Social Sciences Advisory Committee Meeting

Location: Holiday Inn, One Newbury Street (Rt. 1 North), Peabody, MA 01960; telephone: (978) 535–4600.

Committee discussion of how it can implement recommendations on improving social and economic impact analyses in fishery management plans; discussion of committee involvement in the development of Amendment 10 to the Atlantic Scallop FMP (to establish a rotational area management system).

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: December 16, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–33067 Filed 12–20–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121499C]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Highly Migratory Species Plan Development Team (HMSPDT) will hold a work session which is open to the public.

DATES: The work session will be held on Monday, January 31, 2000 from 11 a.m. to 5 p.m.; on Tuesday, February 1, from 8 a.m. to 5 p.m.; and on Wednesday, February 2, from 8 a.m. until business for the day is completed.

ADDRESSES: The work session will be held at NMFS Pacific Fisheries Environmental Laboratory, 1352 Lighthouse Avenue, Pacific Grove, CA; (831) 648–8515.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dan Waldeck, Pacific Fishery Management Council; (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of the work session is to draft sections of the fishery management plan and related documents for highly migratory species fisheries off the West Coast.

Although non-emergency issues not contained in the HMSPDT meeting agenda may come before the HMSPDT for discussion, those issues may not be the subject of formal HMSPDT action during these meetings. HMSPDT action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the HMSPDT's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: December 16, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–33066 Filed 12–20–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 991027288–9288–01]

RIN 0651–AB10

Revised Interim Guidelines for Examination of Patent Applications Under the 35 U.S.C. § 112, ¶ 1 ''Written Description'' Requirement; Request for Comments

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice and request for public comments.

SUMMARY: The Patent and Trademark Office (PTO) requests comments from any interested member of the public on the following Revised Interim Guidelines for Examination of Patent Applications Under the 35 U.S.C. 112, ¶ 1 ''Written Description'' Requirement (Revised Interim Guidelines). These Revised Interim Guidelines will be used by PTO personnel in their review of patent applications for compliance with the ''written description'' requirement of 35 U.S.C. § 112,¶ 1. This revision supersedes the Interim Written Description Guidelines which were published contemporaneously in both the **Federal Register** and Official Gazette at 63 FR 32,639 (June 15, 1998) and 1212 O.G. 15 (July 7, 1998), respectively. This revision reflects the current understanding of the PTO regarding the written description requirement of 35 U.S.C. 112, ¶ 1 and is applicable to all technologies.

DATES: Written comments on the Revised Interim Guidelines will be accepted by the PTO until March 22, 2000.

ADDRESSES: Written comments should be addressed to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231, marked to the attention of Stephen Walsh, or to Box Comments, Assistant Commissioner for Patents, Washington, DC 20231, marked to the attention of Linda S. Therkorn. Alternatively, comments may be submitted to Stephen Walsh via facsimile at (703) 305–9373 or by electronic mail addressed to ''stephen.walsh@uspto.gov'' or to Linda Therkorn via facsimile at (703) 305–8825 or by electronic mail addressed to ''linda.therkorn@uspto.gov.''

FOR FURTHER INFORMATION CONTACT: Stephen Walsh by telephone at (703) 305–9035, by facsimile at (703) 305–9373, by mail to his attention addressed to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231, or by electronic mail at ''stephen.walsh@uspto.gov'; or Linda Therkorn by telephone at (703) 305–8800, by facsimile at (703) 305–8825, by mail addressed to Box Comments, Assistant Commissioner for Patents, Washington, DC 20231, or by electronic mail at ''linda.therkorn@uspto.gov.''

SUPPLEMENTARY INFORMATION: The PTO requests comments from any interested member of the public on the following Revised Interim Guidelines. As of the publication date of this notice, this revision will be used by PTO personnel in their review of patent applications for compliance with the ''written description'' requirement of 35 U.S.C. 112, ¶ 1. Because this revision governs internal practices, it is exempt from notice and comment rulemaking under 5 U.S.C. 553(b)(A).

Written comments should include the following information: (1) Name and affiliation of the individual responding, and (2) an indication of whether the comments offered represent views of the respondent's organization or are respondent's personal views. If you believe the PTO should further amend these revised interim guidelines before they are made final, you should include the following information in your comments: (1) The rationale supporting the proposal, including the identification of applicable legal authority; and (2) a description of the potential benefits and drawbacks of adopting the proposal. The PTO is particularly interested in comments relating to the following topics: (1) The accuracy of the methodology, (2) the legal analysis in the guidelines, and (3) relevant factors to consider in determining whether the written description requirement is satisfied.

Parties presenting written comments are requested, where possible, to provide their comments in machine-readable format in addition to a paper copy. Such submissions may be provided by electronic mail messages sent over the Internet, or on a 3.5″ floppy disk formatted for use in a Macintosh, Windows, Windows for Workgroups, Windows 95, Windows 98, Windows NT, or MS–DOS based computer.

Written comments will be available for public inspection on or about April 19, 2000, in Suite 918, Crystal Park 2, 2121 Crystal Drive, Arlington, Virginia. In addition, comments provided in machine readable format will be available through the PTO's Website at http://www.uspto.gov.

Discussion of Public Comments

Comments were received from 13 individuals and 16 organizations in response to the Request for Comments on the Interim Guidelines for the Examination of Patent Applications Under the 35 U.S.C. 112, ¶ 1 ''Written Description'' Requirement published contemporaneously in the **Federal Register** and Official Gazette at 63 FR 32,639 (June 15, 1998) and 1212 O.G. 15 (July 7, 1998), respectively; and the Extension of Comment Period and Notice of Hearing published at 63 FR 50887 (September 23, 1998) and 1214 O.G. 180 (September 29, 1998). The written comments and the testimony at the public hearing have been carefully considered.

Overview of Comments

The majority of comments favored issuance of written description guidelines, with revisions. Several major issues arose in the oral testimony and written comments submitted in response to the Interim Guidelines on the Written Description Requirement with respect to the scope of the Guidelines, the method of analysis, and the content of the examples. In view of

the comments and testimony received, the Guidelines have been rewritten in a technology neutral manner which is broadly applicable to all areas of technology and to all types of claims (original, new, or amended, and product, process, or product-by-process). Furthermore, the examples have been removed from the Guidelines and examples addressing a broad range of technologies will be incorporated into examiner training materials. Revised Interim Guidelines are being issued for a second round of Notice and Comment because the form and content of the Guidelines are sufficiently different from the previous Guidelines that additional public comment is desired.

The Extension of Comment Period and Notice of Hearing published at 63 FR 50887 (September 23, 1998) and 1214 O.G. 180 (September 29, 1998) asked for comments regarding the patentability of Expressed Sequence Tags (ESTs). Many comments took this opportunity to heavily criticize the patentability of ESTs, grounding their arguments in fairness and policy issues. Many comments also expressed the opinion that ESTs lacked the utility, enablement, and written description necessary to satisfy title 35 of the U.S. Code. The Revised Interim Guidelines are not the appropriate vehicle to fully address the patentability of ESTs. In view of comments and testimony with respect to ESTs and the enablement and utility requirements, the Office is revising the Utility Guidelines as published at 60 FR 36263 (July 14, 1995), and will also be revising the examiner training material with regard to both the utility and enablement requirements. Comments pertaining to the utility and enablement requirements will be addressed in the notice revising the Utility Guidelines. Responses to the comments germane to the written description requirement are set forth below.

Responses to Specific Comments

(1) *Comment:* Several comments criticized the Guidelines for failing to set out a general, systematic examination of the case law on written description. Comments mentioned *Vas-Cath, Inc.* v. *Mahurkar,* 935 F.2d 1555, 19 USPQ2d 1111 (Fed. Cir. 1991), in particular as important for summarizing the state of the law as the Federal Circuit sees it. Other comments particularly urged a general analysis of case law as it pertains to written description for chemical compounds, and criticized the fact that the Guidelines relied heavily on only three recent cases. *Response:* The suggestion to provide a general, systematic legal analysis has been adopted. The Revised Interim Guidelines are grounded more broadly than the three cases heavily relied upon in the original Interim Guidelines, and cases dealing with a variety of arts are relied upon.

(2) *Comment:* The comments were equally divided with respect to the issue of whether the Guidelines should be broadly applicable to all technologies or limited to biotechnology, DNA claims, or unpredictable arts. Two of the comments urging broad applicability stated that the law should be articulated in a clear and technology neutral fashion, and several comments urged that examples and training materials should illustrate application of the Guidelines in a diverse range of technologies. One comment suggested that applications in which written description problems are likely to arise should be identified generically, rather than requiring a written description analysis in each application. *Response:* The suggestion to cover all technologies and to articulate the law in a clear and technology neutral fashion has been adopted. While a written description analysis is required in each case, the Revised Interim Guidelines clearly specify when a written description issue is most likely to arise, and—for most applications—the Revised Interim Guidelines will quickly lead the examiner to determine that, at least for original claims, the written description requirement has been met. The Revised Interim Guidelines avoid narrowing the application of the written description requirement to a single art, and the examiner training materials will illustrate application of the revision in various technologies.

(3) *Comment:* While the majority of comments supported the Interim Guidelines, eight comments opposed their issuance. Some of those opposing the guidelines argued that the decision in *Regents of the University of California* v. *Eli Lilly,* 119 F.3d 1559, 43 USPQ2d 1398 (Fed. Cir. 1997), *cert. denied,* 523 U.S. 1089 (1998), is a drastic departure from legal precedent and PTO practice. In particular, two comments suggested that the Interim Guidelines should be replaced by Revised Interim Guidelines, and one comment recommended that final Guidelines be deferred until the U.S. Court of Appeals for the Federal Circuit or the U.S. Supreme Court hands down decisions that elaborate, construe, modify, or overrule *Eli Lilly* and/or decide related issues not dealt with by that case. See Comments (5) and (9) for more opposing comments. *Response:* This revision is based on the Office's current understanding of the law and is believed to be fully consistent with binding precedent of the U.S. Supreme Court and the U.S. Court of Appeals for the Federal Circuit. Guidelines are necessary in this area to promote uniformity and consistency in the examination process. The suggestion to issue Revised Interim Guidelines for a second round of Notice and Comment has been adopted. The revision is written in a technology neutral manner, and the form is sufficiently different from the previous guidelines that additional public comment is desired.

(4) *Comment:* Six comments were in favor of including process and product-by-process claims in the analysis, whereas one comment was opposed. One comment criticized the Guidelines for failing to acknowledge the ''safe harbor'' product-by-process type claim noted in *Fiers* v. *Revel,* 984 F.2d 1164, 25 USPQ2d 1601 (Fed. Cir. 1993), and *Amgen Inc.* v. *Chugai Pharmaceutical Co.,* 927 F.2d 1200, 18 USPQ2d 1016 (Fed. Cir. 1991). One comment observed that process and product-by-process claims tend not to implicate many written description issues, and it may be useful to point out possible enablement deficiencies for such claims. Two comments suggested that the Guidelines should distinguish between claims to processes whose patentability depends on the compositions used in them, as opposed to those where patentability rests in the steps of the process itself. *Response:* The suggestion to address process and product-by-process claims has been adopted. Furthermore, the training materials will analyze claims wherein the patentability depends on the compositions used therein, as well as those where the patentability rests in the process steps themselves. Enablement issues raised by process and product-by-process claims are outside the scope of these Revised Interim Guidelines.

(5) *Comment:* While one comment stated that the Guidelines correctly present the relationship between written description and enablement, a number of comments dispute that the statute actually has a written description requirement distinct from the enablement requirement. One comment requested that the PTO refrain from issuing any Guidelines in this area until the U.S. Supreme Court rules on the Federal Circuit's present position on written description. Several comments urged the PTO to announce that it will not follow the court decisions applying the separate written description requirement, while others observed that the PTO and the practitioners must nevertheless follow the case law. Some of these comments urged the PTO to

withdraw the Guidelines on the grounds that they are premature because the case law has not developed sufficiently. Others urged the PTO to limit application of the Guidelines to the narrow subject matter of the *Fiers, Amgen,* and *Eli Lilly* cases. *Response:* A separate written description requirement has long been a part of the U.S. patent law. *See, e.g., In re Ruschig,* 379 F.2d 990, 154 USPQ 118 (CCPA 1967). The Federal Circuit has recognized the distinct and separable nature of this requirement. *See Vas-Cath.* Although the interpretation of the law is always evolving, the PTO is obliged to follow the law as currently interpreted by the court. As noted above, the suggestion to limit the application of the Revised Interim Guidelines to certain subject matter has not been adopted.

(6) *Comment:* While several of the comments stated that the Guideline's explanation of the purpose of the written description requirement is accurate, a number of comments suggested that the concept of ''possession'' should be more fully explained or developed. One comment urged that the meaning of ''possession of the invention'' is different for written description than enablement, whereas another observed that an ''in possession of the invention'' test for compliance with the written description requirement does not appear in 35 U.S.C. 112, and its definition and application are not clearly stated in the Federal Circuit cases to date. Another comment urged that descriptive attributes which provide proof of written description should include evidence typically provided to prove a complete and enabling conception. One comment stated that the meaning of ''has invented'' is unclear and queried if actual reduction to practice is required. The same comment asked for clarification on what kind of description equates with possession of a claimed species. One comment stated that a question left unanswered in the Guidelines is that if one has ''made'' an invention, is one necessarily in possession of it, or are there some further criteria? Two comments observed that physical possession is not necessary: one must have complete conception of the invention in mind. These comments suggested that the possession analysis incorporate the Supreme Court's statements in *Pfaff* v. *Wells Electronics, Inc.,* 525 U.S. 55, 48 USPQ2d 1641 (1998) (the word ''invention'' must refer to a concept that is complete: one can prove that an invention is complete and ready for patenting before it has been reduced to practice). One of these comments elaborated that the doctrine of simultaneous conception and reduction to practice should remain applicable to only a very small number of cases, including biotechnology cases. *Response:* The Revised Interim Guidelines expand the explanation of possession by discussing decisions that offer some guidance as to how possession may be shown. The concepts in *Pfaff* v. *Wells Electronics* that are pertinent to an analysis of compliance with the written description requirement have been incorporated in this revision. At this time, the Federal Circuit has not indicated that reduction to practice is necessary for conception or written description of a biotechnological invention. The Office does not intend to impose a written description requirement that is more robust than that set forth by the courts. Accordingly, the Revised Interim Guidelines do not impose a *per se* requirement for reduction to practice in any technology to satisfy the written description requirement. However, the Federal Circuit has recognized that in some instances an inventor may only be able to establish a conception (and therefore possession) by pointing to a reduction to practice through a successful experiment. *See Amgen Inc.* v. *Chugai Pharmaceutical Co.,* 927 F.2d at 1206, 18 USPQ2d at 1021. In such instances, the alleged conception fails not merely because the field is unpredictable or because of the general uncertainty surrounding experimental sciences, but because the conception is incomplete due to factual uncertainty that undermines the specificity of the inventor's idea of the invention. *Burroughs Wellcome Co.* v. *Barr Laboratories Inc.,* 40 F.3d 1223, 1229, 32 USPQ2d 1915, 1920 (Fed. Cir. 1994). Reduction to practice in effect provides the only evidence to corroborate conception (and therefore possession) of the invention. *Id.*

(7) *Comment:* Other comments on ''possession'' urged that possession is to be evaluated by looking to the claims; that the possession question is to be assessed as set forth in *In re Alton,* 76 F.3d 1168, 1176, 37 USPQ2d 1578, 1584 (Fed. Cir. 1996); and that compliance must be assessed on a case-by-case basis given that the question of compliance with the written description requirement is one of fact. One comment stated that the test should be whether the inventor had envisioned the embodiments, not that one of skill in the art can now envision the embodiments. Another comment stated that the Guidelines should take a position with regard to their application to the analysis of declarations submitted under 37 CFR 1.131. *Response:* The Revised Interim Guidelines require the examiner to determine whether there is sufficient written description to inform a skilled artisan that the applicant was in possession of the claimed invention as a whole at the time the application was filed. The revision also indicates that compliance with the written description requirement is a question of fact which must be resolved on a case-by-case basis. While this revision addresses the analysis of possession only in the context of the written description requirement, similar principles apply in determining whether an inventor has met his or her burden of demonstrating possession of the claimed invention in an affidavit or declaration submitted under 37 CFR 1.131.

(8) *Comment:* Several comments suggested that the Guidelines should address questions of support for claims added or amended by the applicant during prosecution (or during an interference). Two comments suggested that the Guidelines should address the ''omitted element'' prong of the written description requirement. One comment indicated the Guidelines should harmonize chemical and nonchemical case law on when an applicant may amend to broaden or change a definition based on an original disclosure. Another comment stated that the Guidelines should acknowledge that it is proper to amend the claims to excise prior art. *Response:* The suggestions to address questions of support for new or amended claims and to address the ''omitted element'' test have been adopted.

(9) *Comment:* Several comments indicated that case law such as *In re Koller*, 613 F.2d 819, 204 USPQ 702 (CCPA 1980), hold that original claims constitute their own written description, or that a statement in *ipsis verbis* is a sufficient description, and that those cases should be adhered to. Three comments pointed out that the Guidelines fail to distinguish between original claims and added/amended claims, arguing that the original claim doctrine should exempt originally filed claims from further requirements. *Response:* The Revised Interim Guidelines emphasize that a description as filed is presumed to be adequate, unless or until the examiner introduces sufficient evidence or technical reasoning to the contrary. The original claim doctrine continues to be viable, but the court has indicated that every claim must be supported by sufficient

evidence of possession, and that, under certain circumstances, claim language may not provide an adequate written description of itself. There are no *per se* rules, since the analysis must be done on a case-by-case basis. While original claims have an initial presumption of descriptive support, the applicant should show support for new or amended claims. *See, e.g.*, Manual of Patent Examining Procedure (MPEP) §§ 714.02 and 2163.06 (7th Ed., July 1998) (''Applicant should * * * specifically point out the support for any amendments made to the disclosure.'').

(10) *Comment:* One comment indicated that written description problems may arise where there is an inadequate description or demonstration of possession of a genus or where there is an improper genus (no common structure and function that is linked to the practical utility disclosed by the specification). Another comment stated that the Guidelines should address the informational nature of nucleic acid sequences and amino acid sequences. One comment urged that ''[a] written description of a genus is sufficient when it is described in enough detail that possession is understood,'' and that the number of species relates more to enablement. *Response:* The Revised Interim Guidelines indicate that the written description requirement for a claimed genus may be satisfied through sufficient description of a representative number of species. The revision does not require a particular number of species to support a genus, but rather requires that the species adequately described be representative of the claimed genus.

(11) *Comment:* A comment urged that the Guidelines should explicitly state that the maturation of the technology will increase the understanding of one skilled in the art, and ease the predictable scope of the claimed invention beyond the exemplified embodiments, as recognized in the applicant's specification. *Response:* The Revised Interim Guidelines emphasize that in a mature art with a high level of knowledge and skill, less evidence of possession is required.

(12) *Comment:* One comment objected to the requirement for an assessment of predictability as a touchstone for written description. The comment described this inquiry as new and lacking case law support. Several comments stated that predictability is an inquiry relating to the enablement requirement, but not to the written description requirement. Others commented generally that the Guidelines conflate what should be separate enablement and written description analyses. On the other hand, at least one comment stated that the distinctions between these elements converge when lack of enablement results from undue breadth of claims. One comment stated that a review of the application is insufficient to establish the level of predictability in an art. Another queried if the review is to be done after a search in the art and assessment of the art. Another comment stated that the lack of guidance for distinguishing between predictable and unpredictable areas within the field of biotechnology leads to confusion. *Response:* The Revised Interim Guidelines reduce the emphasis on predictability because of the confusion with enablement. Instead, the Guidelines emphasize the knowledge in the art and the skill of the practitioner considered in the totality of the circumstances. With respect to the comment regarding biotechnology, this sliding scale will permit broader claims as the knowledge and skill in this art improve. The Guidelines discuss how the general knowledge in the art may be relied on as evidence of how much description may be needed in particular cases.

(13) *Comment:* Several comments criticized the methodology of the Guidelines because the analytic steps set out by the court in *In re Moore*, 439 F.2d 1232, 169 USPQ 236 (CCPA 1971) (first determine what the claims cover, then review the specification for support) were reversed. *Response:* The Revised Interim Guidelines restate the analytic sequence so it is clearly consistent with *In re Moore*. The revision also makes it clear that each claim must be separately analyzed and given its broadest reasonable interpretation in light of and consistent with the written description. *See, e.g., In re Morris,* 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997).

(14) *Comment:* One comment suggested that the Guidelines should provide more instruction on the different amount of description needed to support an essential feature of an invention in contrast to a nonessential feature. The comment explained that contrasting the amount of description needed to support a novel or nonobvious feature of an invention with the amount of description needed for features of an invention that were known in the prior art would be helpful. *Response:* The Revised Interim Guidelines distinguish between novel and old elements in a claim to clarify that the amount of written support needed in an application can vary depending on the general knowledge that was readily available in a particular art.

(15) *Comment:* One comment criticized the analysis for setting out conclusions before the analytic method and for distorting or bypassing the analysis. The same comment said that some of the examples yield illogical results. *Response:* The examples have been deleted from the Guidelines, and the analytical method has been clarified.

(16) *Comment:* The Guidelines were heavily criticized in ten comments for overemphasizing the importance of the preamble and for indicating that generic preamble terms such as ''nucleic acid'' would need less descriptive support than narrower terms such as ''cDNA.'' One comment objected to the proposition that one may have an adequate written description of a genus of DNA when one does not disclose what gene product the DNA encodes and what that gene product does. This comment recommended deletion of the example bridging F.R. 32640–41 (''a gene comprising SEQ ID NO: 1'') as inconsistent with the rest of the Guidelines. *Response:* The Revised Interim Guidelines clarify that the examiner must consider the claim as a whole and that the preamble may be a limitation of the claim. Preamble language is discussed in the context of determining what the claim as a whole encompasses within its scope. However, the Revised Interim Guidelines maintain that any term may trigger a need for more descriptive support because of usage or context. The revision clarifies that during examination claim terms are given their broadest reasonable interpretation consistent with the specification. *See In re Morris,* 127 F.3d 1048, 44 USPQ2d 1023 (Fed. Cir. 1997). The examples have been removed from the text of the revision.

(17) *Comment:* Four comments objected to the Guidelines' definitions for the terms gene, mRNA, and cDNA, stating that the art often refers only to the coding portion of the molecules and does not necessarily imply the presence of regulatory elements or recite specific structures. One comment further indicated that adoption of the PTO's new definition of these terms for purposes of written description considerations could potentially destabilize the economic infrastructure of the biotechnology community because innumerable patents have issued claiming such molecules without regard to the PTO's new interpretation of claim language. The Guidelines were said to use two inconsistent meanings for the term gene that differed in scope and confused the distinction between

genus and species. *Response:* The Revised Interim Guidelines no longer define the term ''gene.''

(18) *Comment:* One comment indicated that the PTO has the opportunity to emphasize the written description requirement as an anti-submarine patent device; this comment and another observed that two parties could obtain claims which would be almost identical in scope in hindsight, based on completely different paths to the claim. *Response:* In *Hyatt* v. *Boone,* 146 F.3d 1348, 1353, 47 USPQ2d 1128, 1131 (Fed. Cir. 1998), the Federal Circuit addressed the submarine patent issue in finding that the appellant's parent application lacked written descriptive support for a later added claim. When an explicit limitation in a claim ''is not present in the written description whose benefit is sought it must be shown that a person of ordinary skill would have understood, at the time the patent application was filed, that the description requires that limitation.'' *Id.*

(19) *Comment:* A comment stated that the Guidelines give too much emphasis to claim structure, as if the claim is the sole source of the written description. Another comment had a different view, stating that the Guidelines fail to focus on the invention being claimed, and noting that in some circumstances, failure to provide the structure of a gene, enzyme, etc. should not result in finding that a claim containing it fails to meet the written description requirement. *Response:* The Office gives a claim its broadest reasonable interpretation during examination. If the claim taken as a whole requires a limitation not set forth in the original disclosure it may raise an issue of lack of proper written description. As noted in *In re Hiniker Co.*, 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998), ''the name of the game is the claim.''

(20) *Comment:* One comment indicated that there was not enough emphasis on transitional phrases and their impact on the adequacy of the written description. *Response:* As with the preamble, the transitional phrase is discussed in the context of the scope of the claimed invention as a whole.

(21) *Comment:* The Extension of Comment Period and Notice of Hearing requested comments as to how the transition terms ''having'' and ''consisting essentially of'' should be treated within the context of nucleotide and amino acid sequence claims. Two comments observed that transitional phrases in the context of nucleotide and amino acid sequence claims should have the same treatment as in chemical cases. Another comment stated that ''consisting essentially of'' language in DNA or vector claims should not be rejected as *per se* improper under 35 U.S.C. 112, ¶ 2. Two comments stated that lacking an art-accepted meaning or a definition in the specification, ''having'' would imply an open claim format; another comment stated that ''having'' is understood to mean ''comprising.'' The term ''consisting essentially of'' was defined by one comment as a closed claim format that is essentially limited to the compound or composition defined explicitly following the transitional phrase, and by two other comments as having the stated sequence and excluding any alterations which materially change the structure and/or function of the specified sequence. One comment opined that ''A DNA consisting essentially of SEQ ID NO: 1'' would be limited to DNAs having the nucleotide sequence set forth in SEQ ID NO: 1 plus minor additions at the 5'— and/or 3' —ends of the recited sequence. Another comment observed that the meaning of ''consisting essentially of'' depends on how the specification defines its usage. *Response:* During examination, the claim as a whole is given the broadest reasonable interpretation consistent with the specification. Transitional phrases should be given the same treatment in all cases. The Revised Interim Guidelines set forth legally recognized definitions for transition language in an endnote. ''Consisting essentially of'' is acceptable transition language in nucleic acid and protein claims. The impact of the transition language on enablement and practical utility will not be dealt with in this forum.

(22) *Comment:* One comment criticized the use of the taxonomic terms ''genus'' and ''species.'' The comment explained that because the terminology is well established in biology, it should not be applied to chemical compounds. Two comments described the Guidelines as deficient in analyzing the proper relationship of preamble, transitional phrase and claim body for distinguishing genus from species claims. According to another comment, the Guidelines confuse genus and species claims. *Response:* The Revised Interim Guidelines refer to the terms ''genus'' and ''species'' in their well accepted legal sense as widely used patent terms of art that are recognized as distinct from their use as taxonomic terms. The revision clarifies what is meant by genus and species.

(23) *Comment:* Several comments found the explanations for the examples deficient because they do not clarify what would constitute a sufficient disclosure. One comment urged that there is no guidance provided as to what would constitute sufficient identifying characteristics, and the Guidelines do not set forth the number of the examples needed for sufficient written description. Another comment urged that structure, or function plus partial structure, or function plus ''some characteristics'' (*e.g.*, 2 or more), is sufficient to meet the written description requirement. Yet another comment urged that uncertainties and potential problems exist because it is unclear how ''relevant'' or ''sufficient'' identifying characteristics are established; that it is unclear how functional properties fit into the analysis; and that problems exist with the level of uncertainty when the complete structure is not disclosed or the structure is not disclosed and only a few identifying characteristics are disclosed. Another comment urged that the methodology is incomplete as to how many identifying characteristics are required and what characteristics are relevant for description of a species. This comment applied the same reasoning to the number of species required for describing a genus. One comment urged that functional characteristics in combination with certain objectively defined physical characteristics can serve to characterize the compound sufficiently to establish possession, even in less developed arts. One comment urged that the ability to predict structure from function is given as a standard for the written description requirement without any citation to authority. *Response:* The Revised Interim Guidelines do not include examples within the text. The test for whether sufficient identifying characteristics have been disclosed is not a bright-line test, but rather requires weighing various factors including the level of skill and knowledge in the art, and the extent to which relevant identifying characteristics are described. The revision provides more guidance to the examiners by citing as examples cases involving mature arts with a high level of skill and knowledge (*e.g.*, *Pfaff* v. *Wells Electronics, Fonar Corp.* v. *General Electric Co.,* 107 F.3d 1543, 1549, 41 USPQ2d 1801, 1805 (Fed. Cir. 1997) and *Vas-Cath* v. *Mahurkar*), as well as cases in emerging technologies where more description is necessary (*e.g.*, *Eli Lilly, Amgen* v. *Chugai,* and *Fiers* v. *Revel*). The test remains whether one of skill in the art, provided with the disclosure, would recognize that the applicant was in possession of the claimed subject matter when the application was filed.

(24) *Comment:* The Extension of Comment Period and Notice of Hearing requested comments on how the final Guidelines should address the deposit of a biological material made under 37 CFR 1.801, and comments on the extent to which a deposit of biological material may be relied upon to support the addition or correction of sequence information. Several comments expressed the opinion that deposit of a compound or biological material can be one means of demonstrating possession of a specifically claimed compound that has not otherwise been described in a complete manner in the specification. One comment stated that if a gene were cloned but not sequenced, and the vector in question were deposited, the sequence is an inherent property of the deposited vector and hence the description requirement would be satisfied if the claim referred to the deposit. One comment urged that the description requirement may be satisfied by the inherent properties of a disclosed structure, citing *Kennecott Corp.* v. *Kyocera Int'l Inc.*, 835 F.2d 1419, 5 USPQ2d 1194 (Fed. Cir. 1987). As for the later addition or correction of information, several comments indicated that actual possession established through a deposit with a partial characterization (*i.e.*, to correlate the physical description to the material that has been deposited, such as molecular weight, partial sequence) should be sufficient to avoid problems with new matter where the information added to a disclosure is an inherent characteristic of the compound or composition. One comment indicated that correcting a sequence based on more accurate sequencing of deposited material does not introduce new matter. One comment stated that present genus-species concepts should prevent an applicant from obtaining an unfair advantage by depositing a large amount of material and then relying on inherency; if a variety of materials are deposited in a single host, the specification must adequately describe how to isolate the intended molecule(s). Two comments expressly stated ''no comment'' with regard to the issue of adding a substantial amount of sequence information. One comment opined that the date of deposit is not controlling with regard to the issue of whether the written description requirement is met, and a second comment observed that *In re Lundak*, 773 F.2d 1216, 227 USPQ 90 (Fed. Cir. 1985), cannot be limited by rule. *Response:* The Revised Interim Guidelines indicate that a deposit of a claimed biological material in accordance with the requirements of 37 CFR 1.801 *et seq.* is evidence of actual reduction to practice of the biological material. However, a deposit is not a substitute for a written description of the claimed invention. The Revised Interim Guidelines also address the issue of when a deposit can be relied upon to correct minor sequencing errors. However, addition of sequence information based on a deposit is not specifically addressed; these circumstances create issues yet to be resolved by the courts, and will be resolved on a case-by-case basis in the PTO. *See, e.g., In re Fisher*, 427 F.2d 833, 836, 166 USPQ 18, 21 (CCPA 1970).

(25) *Comment*: One comment explained that associating taxonomic groupings with gene sequences is a dated concept because genes are not distinguishable as to origin. The generic term ''mammal gene'' was said to be meaningless, absent an implied process limitation that the gene was obtained from a mammal. *Response*: The examples have been removed from the revision. However, the training materials will permit applicants to use taxonomic modifiers such as ''mammalian'' because the usage is ubiquitous in the literature and in patents and generally has an accepted meaning in the art.

(26) *Comment*: One comment urged that broad functional claims lacking defining structure should not be granted on the basis of a ''not easily generalizable disclosure.'' A different comment stated that functional characteristics can be appropriate in all arts. Comments differed on hybridization, where some held it is a proper defining characteristic, and another stated it is insufficient. *Response*: The Revised Interim Guidelines do not establish per se rules regarding functional language. When used appropriately, functional language may provide an adequate written description of the claims invention as discussed in the Revised Interim Guidelines.

(27) *Comment*: Several comments indicated that the Guidelines present inadequate guidance with respect to analyzing written description support for genus claims. One comment stated that the Guidelines provide inadequate criteria for selection of appropriate genuses. Another comment stated that the Guidelines do not provide adequate guidance to determine whether an applicant has presented a properly formed genus, and suggested that ''a genus designation should be strictly tied to the disclosed properties of the structures being claimed.'' Another comment stated that the Guidelines should clarify that the genus/species distinction is determined by the transitional phrase and body of the claim, not the preamble. Another comment stated that the Guidelines provide inadequate guidance as to the number of species required to meet the written description requirement for a genus. One comment urged that a relevant factor to consider is whether the claims cover embodiments broader than the essential elements of the embodiments described in the specification as in *Gentry Gallery Inc.* v. *Berkline,* 134 F.3d 1473, 45 USPQ2d 1498 (Fed. Cir. 1998). According to this comment, species rarely, if ever, constitute sufficient support for generic claims unless accompanied by a general disclosure that is commensurate in scope with the claims. *Response:* The Revised Interim Guidelines follow Federal Circuit case law which requires a representative number of species to satisfy the written description requirement for a genus. Written description is a question of fact, and what constitutes a representative number for a genus is a factual determination left to a case-by-case analysis by the examiner.

(28) *Comment*: One comment urged that general allegations of ''unpredictability in the art'' are insufficient to support a case against the applicant, and that examiners should be instructed to weigh applicant's evidence of what the description provides to one of skill in the art. *Response*: The suggestion to clarify that a general allegation of ''unpredictability in the art'' is insufficient to support a rejection has been adopted. A disclosure as filed is *prima facie* adequate. To support a rejection, the PTO has the burden of showing why the applicant's evidence is insufficient. In any case where lack of written description is found, the PTO should cite documentary evidence in support of the finding. Where documentary evidence is not available, technical reasoning, as distinguished from legal reasoning, may support the finding when the technical line of reasoning relates to fact finding regarding possession of the invention.

(29) *Comment*: One comment indicated that rejections based on the enablement and written description requirements of 35 U.S.C. 112 should be made separately, and the rejections should not mix standards. *Response*: Examiners are directed to make separate rejections based on the enablement and written description requirements of 35 U.S.C. 112. *See, e.g.,* MPEP § 706.03(c) (explaining when it is appropriate to use a particular form paragraph for rejecting claims under 35 U.S.C. 112, ¶1) and MPEP § 2164 (''limitations must be

analyzed for both enablement and description using their separate and distinct criteria'').

(30) *Comment*: One comment observed that the Guidelines do not guide examiners in how to suggest amendments to bring the claims into compliance. The comment also observed that examiners may be ill-equipped to deal with evaluating the sufficiency of applicant's efforts. *Response:* The training materials will provide guidance as to how rejections for lack of an adequate written description can be overcome.

(31) *Comment*: One comment stated that the Guidelines should instruct examiners to pay due regard to the scientific and commercial realities of each individual invention, such that the scope of the claims is a fair reflection of the applicant's contribution to the art. *Response*: The scientific and commercial realities of each invention are considered to the extent that they impact analysis of a claimed invention for compliance with Title 35 of the U.S. Code. The Office is bound to follow the law and cannot make judgment calls as to what is ''a fair reflection of the applicant's contribution to the art.''

(32) *Comment:* While two comments observed that the Guidelines should not have a significant impact on patents or pending or newly filed applications because they are only Guidelines which are not binding on the Board or examiners, three comments were of the opinion that the Guidelines would impact pending and newly filed cases by limiting the scope of patent protection. One comment was of the opinion that the Guidelines should have no impact on issued cases except reissues, whereas another expected many issued patents to be declared invalid (more as a result of *Eli Lilly* than the Guidelines). Another comment observed that the Guidelines should not impose significant new burdens on patent applicants in the biotechnology arts or give rise to a new ''anti-patenting'' posture in the biotechnology examination group; however, the PTO should not be misled into adapting ''customer-friendly'' examination standards that do not subject applications to a thorough and rigorous examination. One comment opined that the Guidelines will result in a great increase in the number of appeals until the Federal Circuit makes clear that the law is quite different, thus delaying commercialization of potentially life improving and life saving inventions. According to this comment, universities and small inventors do not have the financial support to provide the exhaustive kind of work the Guidelines can require for meaningful coverage; this will mean that many biotechnology inventions will not be commercialized. One comment stated that the Commissioner indicates that meaningful patent coverage is required for commercial exploitation of biotechnological inventions, yet the PTO continues to take a position that leads away from what the Commissioner espouses. Another comment felt that the scope of allowed claims would be dependent on the examiner; a potential applicant would not know what sort of claims could be obtained based on a particular disclosure. One comment opined that applications filed after publication of the Guidelines will probably be much more detailed and longer in length. *Response*: The Revised Interim Guidelines clarify that a written description issue should rarely arise for an original claim because such a claim is presumed to have adequate descriptive support. The burden is on the examiner to provide evidence or reasoning in support of any rejection. Such an approach would not be expected to increase the number of appeals, nor should it require exhaustive work for meaningful coverage. The Revised Interim Guidelines are intended to promote uniformity, not diminish it.

(33) *Comment*: One comment indicated it is premature to instruct examiners in the proposed Guidelines since they may change dramatically as a result of public comment. Three comments stated that the Guidelines should not be applied until final Guidelines have been approved; two of these indicated that the Guidelines should only be applied to applications filed after implementation. One comment suggested preparing separate guidance for currently pending applications. *Response*: Separate guidance is not required for pending applications and applications filed after implementation of any final Guidelines; the Guidelines do not establish new law or rules or impose any additional requirements on applicants.

(34) *Comment*: One comment requested that the PTO address the issue of open-claim language for EST claims in the final Guidelines because of their importance to the biotechnology industry. Several comments stated that permitting open-ended language with respect to an EST claim contradicts the written description requirement because the common structural features of the EST do not constitute a ''substantial portion of the genus'' as required by the *Eli Lilly* case. According to these commentators, a claim such as ''a DNA comprising SEQ. ID. NO: 1'' would lack written description when SEQ. ID. NO: 1 was a gene fragment. *Response*: The Revised Interim Guidelines maintain the view that use of such terms as ''gene'' in the preamble of an EST claim may raise a written description issue if one skilled in the art would understand that a ''gene'' requires elements which are not sufficiently described. However, claims to ''a DNA comprising SEQ. ID. NO: 1'' are unlikely to raise a written description issue. The comments do not explain why there is a written description problem for a claim such as ''a DNA comprising SEQ. ID. 1'' when SEQ. ID. 1 is an EST, while there is no problem when SEQ. ID. 1 is a whole gene or a gene promoter. The only difference seems to be the utility of the DNA fragment.

(35) *Comment*: One comment asserted that the scope and level of unpredictability of the structure is so large that the person skilled in the art could not envisage sufficient species to place the genus in possession of the inventor at the time of filing, and that it should be a rare disclosure that supports EST claims broader than the specific SEQ. ID, even for claims such as ''a DNA comprising the EST of SEQ. ID. NO: 1.'' The comment also suggested that claim language that supports the introduction of an infinite amount of random sequence would require an immense number of exemplary species. Several commentators advanced the position that disclosure of only a small fragment does not convey that the inventor was in possession of all of the possible molecules or that the inventor was in possession of the fragment wherever it occurs. *Response*: A claim such as ''a DNA comprising the EST of SEQ. ID. NO: 1'' or ''a gene comprising the EST of SEQ. ID. NO: 1'' will be analyzed for compliance with the written description requirement by determining whether the partial structure in combination with any other disclosed relevant identifying characteristics are sufficient to show that a skilled artisan would recognize that the applicant was in possession of the claimed invention as a whole. The Office does not agree with the comment that the scope of such an EST claim is necessarily too large to satisfy the written description requirement. The PTO has issued numerous patents in the past directed to nucleic acids that use open-ended language. Although an applicant presenting an original claim to an EST using open-ended claim language with disclosure of only the EST sequence is not in possession of any arbitrary specific possible molecule that contains the EST, the applicant may

be in possession of a broad genus of DNA where the EST is in any random nucleic acid sequence. The comment's statement to the contrary would preclude open-ended claims incorporating any DNA sequence such as gene or promoter. In fact, such a view would appear to preclude open-ended language for any other polymer. However, such open-ended EST claims may not comply with the utility and scope of enablement requirements of 35 U.S.C. 101 and 112.

Revised Interim Guidelines for the Examination of Patent Applications Under the 35 U.S.C. § 112, ¶ 1 "Written Description" Requirement

These revised interim "Written Description Guidelines" are intended to assist Office personnel in the examination of patent applications for compliance with the written description requirement of 35 U.S.C. 112, ¶ 1. This revision is based on the Office's current understanding of the law and public comments received in response to the PTO's previous request for public comments on its Interim Written Description Guidelines and is believed to be fully consistent with binding precedent of the U.S. Supreme Court, as well as the U.S. Court of Appeals for the Federal Circuit and its predecessor courts.

This revision does not constitute substantive rulemaking and hence does not have the force and effect of law. It is designed to assist Office personnel in analyzing claimed subject matter for compliance with substantive law. Rejections will be based upon the substantive law, and it is these rejections which are appealable. Consequently, any perceived failure by Office personnel to follow the Revised Interim Guidelines is neither appealable nor petitionable.

These Revised Interim Guidelines are intended to form part of the normal examination process. Thus, where Office personnel establish a *prima facie* case of lack of written description for a claim, a thorough review of the prior art and examination on the merits for compliance with the other statutory requirements, including those of 35 U.S.C. 101, 102, 103, and 112, is to be conducted prior to completing an Office action which includes a rejection for lack of written description. Office personnel are to rely on this revision of the guidelines in the event of any inconsistent treatment of issues involving the written description requirement between these Revised Interim Guidelines and any earlier guidance provided from the Office.

I. General Principles Governing Compliance With the "Written Description" Requirement for Applications

The first paragraph of 35 U.S.C. 112 requires that the "specification shall contain a written description of the invention. * * *" This requirement is separate and distinct from the enablement requirement.[1] The written description requirement has several policy objectives. "[T]he 'essential goal' of the description of the invention requirement is to clearly convey the information that an applicant has invented the subject matter which is claimed." [2] Another objective is to put the public in possession of what the applicant claims as the invention. The written description requirement of the Patent Act promotes the progress of the useful arts by ensuring that patentees adequately describe their inventions in their patent specifications in exchange for the right to exclude others from practicing the invention for the duration of the patent's term.[3]

To satisfy the written description requirement, a patent specification must describe the claimed invention in sufficient detail that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention.[4] An applicant shows possession of the claimed invention by describing the claimed invention with all of its limitations.[5] Possession may be shown by actual reduction to practice,[6] or by showing that the invention was "ready for patenting" such as by the disclosure of drawings or other descriptions of the invention that are sufficiently specific to enable a person skilled in the art to practice the invention.[7] A question as to whether a specification provides an adequate written description may arise in the context of an original claim which is not described sufficiently, a new or amended claim wherein a claim limitation has been added or removed, or a claim to entitlement of an earlier priority date or effective filing date under 35 U.S.C. 119, 120, or 365(c).[8] Compliance with the written description requirement is a question of fact which must be resolved on a case-by-case basis.[9]

A. Original Claims

There is a strong presumption that an adequate written description of the claimed invention is present when the application is filed.[10] However, the issue of a lack of adequate written description may arise even for an original claim when an aspect of the claimed invention has not been described with sufficient particularity such that one skilled in the art would recognize that the applicant had possession of the claimed invention.[11] The claimed invention as a whole may not be adequately described if the claims require an essential or critical element which is not adequately described in the specification and which is not conventional in the art.[12] This problem may arise where an invention is described solely in terms of a method of its making coupled with its function and there is no described or art recognized correlation or relationship between the structure of the invention and its function.[13] A lack of adequate written description problem also arises if the knowledge and level of skill in the art would not permit one skilled in the art to immediately envisage the product claimed from the disclosed process.[14]

B. New or Amended Claims

The proscription against the introduction of new matter in a patent application [15] serves to prevent an applicant from adding information that goes beyond the subject matter originally filed.[16] Thus, the written description requirement prevents an applicant from claiming subject matter that was not adequately described in the specification as filed. New or amended claims which introduce elements or limitations which are not supported by the as-filed disclosure violate the written description requirement.[17] While there is no *in haec verba* requirement, newly added claim limitations must be supported in the specification through express, implicit, or inherent disclosure. An amendment to correct an obvious error does not constitute new matter where one skilled in the art would not only recognize the existence of the error in the specification, but also the appropriate correction.[18]

Under certain circumstances, omission of a limitation can raise an issue regarding whether the inventor had possession of a broader, more generic invention.[19] A claim that omits an element which applicant describes as an essential or critical feature of the invention originally disclosed does not comply with the written description requirement.[20]

The fundamental factual inquiry is whether the specification conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, applicant was in possession of the invention as now claimed.[21]

[1] See Endnotes at end of this notice.

II. Methodology for Determining Adequacy of Written Description

A. Read and Analyze the Specification for Compliance With 35 U.S.C. 112, ¶ 1

Office personnel should adhere to the following procedures when reviewing patent applications for compliance with the written description requirement of 35 U.S.C. 112, ¶ 1. The examiner has the initial burden, after a thorough reading and evaluation of the content of the application, of presenting evidence or reasons why a person skilled in the art would not recognize that the written description of the invention provides support for the claims. There is a strong presumption that an adequate written description of the claimed invention is present in the specification as filed; [22] however, with respect to newly added or amended claims, applicant should show support in the original disclosure for the new or amended claims.[23] Consequently, rejection of an original claim for lack of written description should be rare. The inquiry into whether the description requirement is met is a question of fact that must be determined on a case-by-case basis.[24]

1. For Each Claim, Determine What the Claim as a Whole Covers

Claim construction is an essential part of the examination process. Each claim must be separately analyzed and given its broadest reasonable interpretation in light of and consistent with the written description.[25] The entire claim must be considered, including the preamble language [26] and the transitional phrase.[27] The claim as a whole, including all limitations found in the preamble,[28] the transitional phrase, and the body of the claim, must be sufficiently described in the specification to satisfy the written description requirement.[29]

The examiner should evaluate each claim to determine if sufficient structures, acts, or functions are recited to make clear the scope and meaning of the claim, including the weight to be given the preamble.[30] The absence of definitions or details for well-established terms or procedures should not be the basis of a rejection under 35 U.S.C. 112, ¶ 1, for lack of adequate written description. Limitations may not, however, be imported into the claims from the specification.

2. Review the Entire Application to Understand What Applicant Has Described as the Essential Features of the Invention

Prior to determining whether the disclosure satisfies the written description requirement for the claimed subject matter, the examiner should review the claims and the entire specification, including the specific embodiments, figures, and sequence listings, to understand what applicant has identified as the essential distinguishing characteristics of the invention. The analysis of whether the specification complies with the written description requirement requires the examiner to determine the correspondence between what applicant has described as the essential identifying characteristic features of the invention, *i.e.,* what the applicant has demonstrated possession of, and what applicant has claimed. Such a review is conducted from the standpoint of one of skill in the art at the time the application was filed,[31] and should include a determination of the field of the invention and the level of skill and knowledge in the art. Generally, there is an inverse correlation between the level of skill and knowledge in the art and the specificity of disclosure necessary to satisfy the written description requirement. Information which is well known in the art does not have to be described in detail in the specification.[32]

3. Determine Whether There is Sufficient Written Description To Inform a Skilled Artisan That Applicant Was in Possession of the Claimed Invention as a Whole at the Time the Application Was Filed

a. Original claims.—Possession may be shown in any number of ways. Possession may be shown by actual reduction to practice, by a clear depiction of the invention in detailed drawings which permit a person skilled in the art to clearly recognize that applicant had possession of the claimed invention, or by a written description of the invention describing sufficient relevant identifying characteristics such that a person skilled in the art would recognize that the inventor had possession of the claimed invention.[33]

A specification may show actual reduction to practice by showing that the inventor constructed an embodiment or performed a process that met all the limitations of the claim, and determined that the invention would work for its intended purpose.[34] Actual reduction to practice of a biological material may be shown by specifically describing a deposit made in accordance with the requirements of 37 C.F.R. § 1.801 *et seq.*[35]

An applicant may show possession of an invention by disclosure of drawings that are sufficiently detailed to show that applicant was in possession of the claimed invention as a whole.[36] The description need only describe in detail that which is new or not conventional.[37] This is equally true whether the claimed invention is directed to a product or a process. Normally a reduction to drawings will adequately describe the claimed invention.[38]

An applicant may also show that an invention is complete by disclosure of sufficiently detailed relevant identifying characteristics which provide evidence that applicant was in possession of the claimed invention,[39] *i.e.,* complete or partial structure, other physical and/or chemical properties, functional characteristics when coupled with a known or disclosed correlation between function and structure, or some combination of such characteristics.[40] What is conventional or well known to one skilled in the art need not be disclosed in detail.[41] If a skilled artisan would have understood the inventor to be in possession of the claimed invention at the time of filing, even if every nuance of the claims is not explicitly described in the specification, then the adequate description requirement is met.[42]

(1) For each claim drawn to a single embodiment or species: [43]

(a) Determine whether the application describes an actual reduction to practice of the claimed invention.

(b) If the application does not describe an actual reduction to practice, determine whether the invention is complete as evidenced by a reduction to drawings.

(c) If the application does not describe an actual reduction to practice or reduction to drawings, determine whether the invention has been set forth in terms of distinguishing identifying characteristics as evidenced by other descriptions of the invention that are sufficiently detailed to show that applicant was in possession of the claimed invention.

(i) Determine whether the application as filed describes the complete structure (or acts of a process) of the claimed invention as a whole. The complete structure of a species or embodiment typically satisfies the requirement that the description be set forth ''in such full, clear, concise, and exact terms'' to show possession of the claimed invention.[44] If a complete structure is disclosed, the written description requirement is satisfied for that species or embodiment, and a rejection under 35 U.S.C. 112, ¶ 1 for lack of written description must not be made.

(ii) If the application as filed does not disclose the complete structure (or acts of a process) of the claimed invention as a whole, determine whether the specification discloses other relevant identifying characteristics sufficient to

describe the claimed invention in such full, clear, concise, and exact terms that a skilled artisan would recognize applicant was in possession of the claimed invention.[45] Whether the specification shows that applicant was in possession of the claimed invention is not a single, simple factual determination, but rather is a conclusion reached by weighing many factual considerations. Factors to be considered in determining whether there is sufficient evidence of possession include the level of skill and knowledge in the art, partial structure, physical and/or chemical properties, functional characteristics alone or coupled with a known or disclosed correlation between structure and function, and the method of making the claimed invention. Disclosure of any combination of such identifying characteristics that distinguish the claimed invention from other materials and would lead one of skill in the art to the conclusion that the applicant was in possession of the claimed species is sufficient. Patents and printed publications in the art should be relied upon to determine whether an art is mature and what the level of knowledge and skill is in the art. In most technologies which are mature, and wherein the knowledge and level of skill in the art is high, a written description question should not be raised for original claims even if the specification discloses only a method of making the invention and the function of the invention.[46] In contrast, in emerging and unpredictable technologies, more evidence is required to show possession. For example, disclosure of only a method of making the invention and the function may not be sufficient to support a product claim other than a product-by-process claim.[47] Furthermore, disclosure of partial structure without additional characterization of the product may not be sufficient to evidence possession of the claimed invention.[48]

Any claim to a species that does not meet the test described under at least one of (a), (b), or (c) must be rejected as lacking adequate written description under 35 U.S.C. 112, ¶ 1.

(2) For each claim drawn to a genus:

The written description requirement for a claimed genus may be satisfied through sufficient description of a representative number of species by actual reduction practice (see (1)(a), above), reduction to drawings (see (1)(b), above), or by disclosure of relevant identifying characteristics, *i.e.,* structure or other physical and/or chemical properties, by functional characteristics coupled with a known or disclosed correlation between function and structure, or by a combination of such identifying characteristics, sufficient to show the applicant was in possession of the claimed genus (see (1)(c), above).[49]

A ''representative number of species'' means that the species which are adequately described are representative of the entire genus. Thus, when there is substantial variation within the genus, one must describe a sufficient variety of species to reflect the variation within the genus. What constitutes a ''representative number'' is an inverse function of the skill and knowledge in the art. Satisfactory disclosure of a ''representative number'' depends on whether one of skill in the art would recognize that the applicant was in possession of the necessary common attributes or features of the elements possessed by the members of the genus in view of the species disclosed. In an unpredictable art, adequate written description of a genus which embraces widely variant species *cannot* be achieved by disclosing only one species within the genus.[50] Description of a representative number of species does not require the description to be of such specificity that it would provide individual support for each species that the genus embraces.[51] If a representative number of adequately described species are not disclosed for a genus, the claim to that genus must be rejected as lacking adequate written description under 35 U.S.C. 112, ¶ 1.

b. New claims, amended claims, or claims asserting entitlement to the benefit of an earlier priority date or filing date under 35 U.S.C. §§ 119, 120, or 365(c).—The examiner has the initial burden of presenting evidence or reasoning to explain why persons skilled in the art would not recognize in the original disclosure a description of the invention defined by the claims.[52] However, when filing an amendment an applicant should show support in the original disclosure for new or amended claims.[53] To comply with the written description requirement of 35 U.S.C. 112, ¶ 1, or to be entitled to an earlier priority date or filing date under 35 U.S.C. 119, 120, or 365(c), each claim limitation must be expressly,[54] implicitly,[55] or inherently [56] supported in the originally filed disclosure.[57] Furthermore, each claim must include all elements which applicant has described as essential.[58]

If the originally filed disclosure does not provide support for each claim limitation, or if an element which applicant describes as essential or critical is not claimed, a new or amended claim must be rejected under 35 U.S.C. 112, ¶ 1, as lacking adequate written description, or in the case of a claim for priority under 35 U.S.C. 119, 120, or 365(c), the claim for priority must be denied.

III. Complete Patentability Determination Under All Statutory Requirements and Clearly Communicate Findings, Conclusions and Their Bases

The above only describes how to determine whether the written description requirement of 35 U.S.C. 112, ¶ 1 is satisfied. Regardless of the outcome of that determination, Office personnel must complete the patentability determination under all the relevant statutory provisions of Title 35 of the U.S. Code.

Once Office personnel have concluded analysis of the claimed invention under all the statutory provisions, including 35 U.S.C. 101, 112, 102, and 103, they should review all the proposed rejections and their bases to confirm their correctness. Only then should any rejection be imposed in an Office action. The Office action should clearly communicate the findings, conclusions, and reasons which support them. When possible, the Office action should offer helpful suggestions on how to overcome rejections.

A. For Each Claim Lacking Written Description Support, Reject the Claim Under Section 112, ¶ 1, for Lack of Adequate Written Description

A description as filed is presumed to be adequate, unless or until sufficient evidence or reasoning to the contrary has been presented by the examiner to rebut the presumption.[59] The examiner, therefore, must have a reasonable basis to challenge the adequacy of the written description. The examiner has the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims.[60] In rejecting a claim, the examiner must set forth express findings of fact regarding the above analysis which support the lack of written description conclusion. These findings should:

(1) identify the claim limitation at issue; and

(2) establish a *prima facie* case by providing reasons why a person skilled in the art at the time the application was filed would not have recognized that the inventor was in possession of the invention as claimed in view of the disclosure of the application as filed. A general allegation of ''unpredictability

in the art'' is not a sufficient reason to support a rejection for lack of adequate written description.

When appropriate, suggest amendments to the claims which can be supported by the application's written description, being mindful of the prohibition against the addition of new matter in the claims or description.[61]

B. Upon Reply By Applicant, Again Determine the Patentability of the Claimed Invention, Including Whether the Written Description Requirement is Satisfied by Reperforming the Analysis Described Above in View of the Whole Record

Upon reply by applicant, before repeating any rejection under 35 U.S.C. 112, ¶ 1 for lack of written description, review the basis for the rejection in view of the record as a whole, including amendments, arguments, and any evidence submitted by applicant. If the whole record now demonstrates that the written description requirement is satisfied, do *not* repeat the rejection in the next Office action. If the record still does not demonstrate that written description is adequate to support the claim(s), repeat the rejection under 35 U.S.C. 112, ¶ 1, fully respond to applicant's rebuttal arguments, and properly treat any further showings submitted by applicant in the reply. Any affidavits, including those relevant to the 112, ¶ 1, written description requirement,[62] must be thoroughly analyzed and discussed in the next Office action.

ENDNOTES

1. *See, e.g., Vas-Cath, Inc.* v. *Mahurkar*, 935 F.2d 1555, 1560, 19 USPQ2d 1111, 1114 (Fed. Cir. 1991).

2. *In re Barker*, 559 F.2d 588, 592 n.4, 194 USPQ 470, 473 n.4 (CCPA 1977).

3. *See Regents of the University of California* v. *Eli Lilly*, 119 F.3d 1559, 1566, 43 USPQ2d 1398, 1404 (Fed. Cir. 1997), *cert. denied*, 523 U.S. 1089 (1998).

4. *See, e.g., Vas-Cath, Inc.* v. *Mahurkar*, 935 F.2d at 1563, 19 USPQ2d at 1116. Much of the written description case law addresses whether the specification as originally filed supports claims not originally in the application. The issue raised in the cases is most often phrased as whether the original application provides ''adequate support'' for the claims at issue or whether the material added to the specification incorporates ''new matter'' in violation of 35 U.S.C. § 132. The ''written description'' question similarly arises in the interference context, where the issue is whether the specification of one party to the interference can support the newly added claims corresponding to the count at issue, *i.e.*, whether that party can ''make the claim'' corresponding to the interference count. *E.g., see Martin* v. *Mayer*, 823 F.2d 500, 502, 3 USPQ2d 1333, 1335 (Fed. Cir. 1987).

In addition, early opinions suggest the Patent and Trademark Office was unwilling to find written descriptive support when the only description was found in the claims; however, this viewpoint was rejected. *See In re Koller*, 613 F.2d 819, 204 USPQ 702 (CCPA 1980) (original claims constitute their own description); *In re Gardner*, 475 F.2d 1389, 177 USPQ 396 (CCPA 1973) (accord); *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976) (accord). It is now well accepted that a satisfactory description may be in the claims or any other portion of the originally filed specification.

These early opinions did not address the quality or specificity of particularity that was required in the description, *i.e.*, how much description is enough.

5. *Lockwood* v. *American Airlines, Inc.*, 107 F.3d 1565, 1572, 41 USPQ2d 1961, 1966 (Fed. Cir. 1997).

6. An application specification may show actual reduction to practice by describing testing of the claimed invention or, in the case of biological materials, by specifically describing a deposit made in accordance with 37 CFR 1.801 *et seq.* 37 CFR 1.804, 1.809. *See also Deposit of Biological Materials for Patent Purposes, Final Rule*, 54 FR 34,864 (August 22, 1989) (''The requirement for a specific identification is consistent with the description requirement of the first paragraph of 35 U.S.C. 112, and to provide an antecedent basis for the biological material which either has been or will be deposited before the patent is granted.'' *Id.* at 34876. ''[T]he description must be sufficient to permit verification that the deposited biological material is in fact that disclosed. Once the patent issues, the description must be sufficient to aid in the resolution of questions of infringement.'' *Id.* at 34,880.). Such a deposit is not a substitute for a written description of the claimed invention. The written description of the deposited material needs to be as complete as possible because the examination for patentability proceeds solely on the basis of the written description. *See, e.g., In re Lundak*, 773 F.2d 1216, 227 USPQ 90 (Fed. Cir. 1985). *See also* 54 FR at 34,880 (''As a general rule, the more information that is provided about a particular deposited biological material, the better the examiner will be able to compare the identity and characteristics of the deposited biological material with the prior art.'').

7. *Pfaff* v. *Wells Electronics, Inc.*, 525 U.S. 55,____ , 119 S.Ct. 304, 312, 48 USPQ2d 1641, 1647 (1998).

8. A description requirement issue can arise for original claims (*see, e.g., Eli Lilly*, 119 F.3d 1559, 43 USPQ2d 1398) as well as new or amended claims. Most typically, the issue will arise in the context of determining whether new or amended claims are supported by the description of the invention in the application as filed (*see, e.g., In re Wright*, 866 F.2d 422, 9 USPQ2d 1649 (Fed. Cir. 1989)), whether a claimed invention is entitled to the benefit of an earlier priority date or effective filing date under 35 U.S.C. 119, 120, or 365(c) (*see, e.g., Tronzo* v. *Biomet, Inc.*, 156 F.3d 1154, 47 USPQ2d 1829 (Fed. Cir. 1998); *Fiers* v. *Revel*, 984 F.2d 1164, 25 USPQ2d 1601 (Fed. Cir. 1993); *In re Ziegler*, 992 F.2d 1197, 1200, 26 USPQ2d 1600, 1603 (Fed. Cir. 1993)), or whether a specification provides support for a claim corresponding to a count in an interference (*see, e.g., Fields* v. *Conover*, 443 F.2d 1386, 170 USPQ 276 (CCPA 1970)).

9. *Vas-Cath, Inc.* v. *Mahurkar*, 935 F.2d at 1563, 19 USPQ2d at 1116 (Fed. Cir. 1991).

10. *In re Wertheim*, 541 F.2d at 262, 191 USPQ at 96.

11. See endnote 4.

12. For example, consider the claim ''A gene comprising SEQ ID NO: 1.'' A determination of what the claim as a whole covers may result in a conclusion that specific structures such as a promoter, a coding region, or other elements are included. Although all genes encompassed by this claim share the characteristic of comprising SEQ ID NO: 1, there may be insufficient description of those specific structures (*e.g.*, promoters, enhancers, coding regions, and other regulatory elements) which are also included.

13. A biomolecule sequence described only by a functional characteristic, without any known or disclosed correlation between that function and the structure of the sequence, normally is not a sufficient identifying characteristic for written description purposes, even when accompanied by a method of obtaining the claimed sequence. For example, even though a genetic code table would correlate a known amino acid sequence with a genus of coding nucleic acids, the same table cannot predict the native, naturally occurring nucleic acid sequence of a naturally occurring mRNA or its corresponding cDNA. *Cf. In re Bell*, 991 F.2d 781, 26 USPQ2d 1529 (Fed. Cir. 1993), and *In re Deuel*, 51 F.3d 1552, 34 USPQ2d 1210 (Fed. Cir. 1995) (holding that a process could not render the product of that process obvious under 35 U.S.C. 103). The Federal Circuit has pointed out that under United States law, a description that does not render a claimed invention obvious cannot sufficiently describe the invention for the purposes of the written description requirement of 35 U.S.C. 112. *Eli Lilly*, 119 F.3d at 1567, 43 USPQ2d at 1405. The fact that a great deal more than just a process is necessary to render a product invention obvious means that a great deal more than just a process is necessary to provide written description for a product invention.

Compare Fonar Corp. v. *General Electric Co.*, 107 F.3d 1543, 1549, 41 USPQ2d 1801, 1805 (Fed. Cir. 1997) (''As a general rule, where software constitutes part of a best mode of carrying out an invention, description of such a best mode is satisfied by a disclosure of the functions of the software. This is because, normally, writing code for such software is within the skill of the art, not requiring undue experimentation, once its functions have been disclosed * * *. Thus, flow charts or source code listings are not a requirement for adequately disclosing the functions of software.'').

14. *See, e.g., Fujikawa* v. *Wattanasin*, 93 F.3d 1559, 1571, 39 USPQ2d 1895, 1905 (Fed. Cir. 1996) (a ''laundry list'' disclosure of every possible moiety does not constitute a written description of every species in a genus because it would not ''reasonably

lead'' those skilled in the art to any particular species); *In re Ruschig*, 379 F.2d 990, 995, 154 USPQ 118, 122–23 (CCPA 1967) (''If n-propylamine had been used in making the compound instead of n-butylamine, the compound of claim 13 would have resulted. Appellants submit to us, as they did to the board, an imaginary specific example patterned on specific example 6 by which the above butyl compound is made so that we can see what a simple change would have resulted in a specific supporting disclosure being present in the present specification. The trouble is that there is no such disclosure, easy though it is to imagine it.'').

15. 35 U.S.C. 132 and 251. *See also In re Rasmussen*, 650 F.2d 1212, 1214, 211 USPQ 323, 326 (CCPA 1981). *See* Manual of Patent Examining Procedure (MPEP) §§ 2163.06–2163.07 (7th Ed., July 1998) for a more detailed discussion of the written description requirement and its relationship to new matter.

16. The claims as filed in the original specification are part of the disclosure and therefore, if an application as originally filed contains a claim disclosing material not found in the remainder of the specification, the applicant may amend the specification to include the claimed subject matter. *In re Benno*, 768 F.2d 1340, 226 USPQ 683 (Fed. Cir. 1985).

17. *See, e.g., In re Lukach*, 442 F.2d 967, 169 USPQ 795 (CCPA 1971) (subgenus range was not supported by generic disclosure and specific example within the subgenus range); *In re Smith*, 458 F.2d 1389, 1395, 173 USPQ 679, 683 (CCPA 1972) (a subgenus is not necessarily described by a genus encompassing it and a species upon which it reads).

18. *In re Oda*, 443 F.2d 1200, 170 USPQ 260 (CCPA 1971). With respect to the correction of sequencing errors in applications disclosing nucleic acid and/or amino acid sequences, it is well know that sequencing errors are a common problem in molecular biology. *See, e.g.*, Richterich, Peter, ''Estimation of Errors in 'Raw' DNA Sequences: A Validation Study,'' *Genome Research*, 8:251–259 (1998). If an application as filed includes sequence information and references a deposit of the sequenced material made in accordance with the requirements of 37 CFR 1.801 *et seq.*, corrections of minor errors in the sequence may be possible based on the argument that one of skill in the art would have resequenced the deposited material and would have immediately recognized the minor error. Deposits made after the filing date can only be relied upon to provide support for the correction of sequence information if applicant submits a statement in compliance with 37 CFR 1.804 stating that the biological material which is deposited is a biological material specifically defined in the application as filed.

19. *See, e.g., Gentry Gallery, Inc.* v. *Berkline Corp.,* 134 F.3d 1473, 45 USPQ2d 1498 (Fed. Cir. 1998) (claims to a section sofa comprising, *inter alia,* a console and a control means were held invalid for failing to satisfy the written description requirement where the claims were broadened by removing the location of the control means.); *Johnson Worldwide Associates Inc.* v. *Zebco Corp.,* 175 F.3d 985, 993, 50 USPQ2d 1607, 1613 (Fed. Cir. 1999) (In *Gentry Gallery,* the ''court's determination that the patent disclosure did not support a broad meaning for the disputed claim terms was premised on clear statements in the written description that described the location of a claim element—the 'control means'—as 'the only possible location' and that variations were 'outside the stated purpose of the invention.' *Gentry Gallery,* 134 F.3d at 1479, 45 USPQ2d at 1503. *Gentry Gallery,* then, considers the situation where the patent's disclosure makes crystal clear that a particular (*i.e.,* narrow) understanding of a claim term is an 'essential element of [the inventor's] invention.' ''); *Tronzo* v. *Biomet, Inc.,* 156 F.3d 1154, 1159, 47 USPQ2d 1829, 1833 (Fed. Cir. 1998) (claims to generic cup shape were not entitled to filing date of parent application which disclosed ''conical cup'' in view of the disclosure of the parent application stating the advantages and importance of the conical shape.).

20. *See Gentry Gallery,* 134 F.3d at 1480, 45 USPQ2d at 1503; *In re Sus,* 306 F.2d 494, 134 USPQ 301 (CCPA 1962) (''[O]ne skilled in this art would not be taught by the written description of the invention in the specification that any 'aryl or substituted aryl radical' would be suitable for the purposes of the invention but rather that only certain aryl radicals and certain specifically substituted aryl radicals [*i.e.,* aryl azides] would be suitable for such purposes.''). A claim which omits matter disclosed to be essential to the invention as described in the specification or in other statements of record may also be subject to rejection under 35 U.S.C. § 112, ¶ 1 as not enabling, or under 35 U.S.C. 112, ¶ 2. *See In re Mayhew,* 527 F.2d 1229, 188 USPQ 356 (CCPA 1976); *In re Venezia,* 530 F.2d 956, 189 USPQ 149 (CCPA 1976); and *In re Collier,* 397 F.2d 1003, 158 USPQ 266 (CCPA 1968). *See also Reiffin* v. *Microsoft Corp.,* 48 USPQ2d 1274, 1277 (N.D. Cal. 1998) and MPEP § 2172.01.

21. *See, e.g., Vas-Cath, Inc.,* 935 F.2d at 1563–64, 19 USPQ2d at 1117.

22. *Wertheim,* 541 F.2d at 262, 191 USPQ at 96.

23. *See* MPEP §§ 714.02 and 2163.06 (''Applicant should * * * specifically point out the support for any amendments made to the disclosure.''); and MPEP § 2163.04 (''If applicant amends the claims and points out where and/or how the originally filed disclosure supports the amendment(s), and the examiner finds that the disclosure does not reasonably convey that the inventor had possession of the subject matter of the amendment at the time of the filing of the application, the examiner has the initial burden of presenting evidence or reasoning to explain why persons skilled in the art would not recognize in the disclosure a description of the invention defined by the claims.'').

24. *See In re Smith,* 458 F.2d 1389, 1395, 173 USPQ 679, 683 (CCPA 1972) (''Precisely how close [to the claimed invention] the description must come to comply with § 112 must be left to case-by-case development.''); *In re Wertheim,* 541 F.2d at 262, 191 USPQ at 96 (inquiry is primarily factual and depends on the nature of the invention and the amount of knowledge imparted to those skilled in the art by the disclosure).

25. *See, e.g., In re Morris,* 127 F.3d 1048, 1053–54, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997).

26. ''Preamble language'' is that language in a claim appearing before the transitional phase, e.g., before ''comprising,'' ''consisting essentially of,'' or ''consisting of.''

27. The transitional term ''comprising'' (and other comparable terms, *e.g.,* ''containing,'' ''including,'' and ''having'') is ''open-ended—it covers the expressly recited subject matter, alone or in combination with unrecited subject matter. *See, e.g., Ex parte Davis,* 80 USPQ 448, 450 (Bd. App. 1948) (''comprising'' leaves the ''claim open for the inclusion of unspecified ingredients even in major amounts''), *quoted with approval in Moleculon Research Corp* v. *CBS, Inc.,* 793 F.2d 1261, 1271, 229 USPQ 805, 812 (Fed. Cir. 1986). ''By using the term 'consisting essentially of,' the drafter signals that the invention necessarily includes the listed ingredients and is open to unlisted ingredients that do not materially affect the basic and novel properties of the invention. A 'consisting essentially of' claim occupies a middle ground between closed claims that are written in a 'consisting of' format and fully open claims that are drafted in a 'comprising' format.'' *PPG Industries* v. *Guardian Industries,* 156 F.3d 1351, 1354, 48 USPQ2d 1351, 1353–54 (Fed. Cir. 1998). For search and examination purposes, absent a clear indication in the specification of what the basic and novel characteristics actually are, 'consisting essentially of' will be construed as equivalent to ''comprising.'' *See, e.g., PPG,* 156 F.3d at 1355, 48 USPQ at 1355 (''PPG could have defined the scope of the phrase 'consisting essentially of' for purposes of its patent by making clear in its specification what it regarded as constituting a material change in the basic and novel characteristics of the invention.'').

28. *See Pac-Tec Inc.* v. *Amerace Corp.,* 903 F.2d 796, 801, 14 USPQ2d 1871, 1876 (Fed. Cir. 1990) (determining that preamble language that constitutes a structural limitation is actually part of the claimed invention).

29. An applicant shows possession of the claimed invention by describing the claimed invention with all of its essential novel elements. *Lockwood,* 107 F.3d at 1572, 41 USPQ2d at 1966.

30. *See, e.g., Bell Communications Research, Inc.* v. *Vitalink Communications Corp.,* 55 F.3d 615, 620, 34 USPQ2d 1816, 1820 (Fed. Cir. 1995) (''[A] claim preamble has the import that the claim as a whole suggests for it.''); *Corning Glass Works* v. *Sumitomo Elec. U.S.A., Inc.,* 868 F.2d 1251, 1257, 9 USPQ2d 1962, 1966 (Fed. Cir. 1989) (The determination of whether preamble recitations are structural limitations can be resolved only on review of the entirety of the application ''to gain an understanding of what the inventors actually invented and intended to encompass by the claim.'').

31. *See, e.g., Wang Labs.* v. *Toshiba Corp.,* 993 F.2d 858, 865, 26 USPQ2d 1767, 1774 (Fed. Cir. 1993).

32. *See, e.g., Hybritech Inc.* v. *Monoclonal Antibodies, Inc.,* 802 F.2d 1367, 1379–80, 231 USPQ 81, 90 (Fed. Cir. 1986).

33. *Pfaff* v. *Wells Electronics, Inc.,* 119 S.Ct. at 311, 48 USPQ2d at 1646 (''The word 'invention' must refer to a concept that is complete, rather than merely one that is 'substantially complete.' It is true that reduction to practice ordinarily provides the best evidence that an invention is complete. But just because reduction to practice is sufficient evidence of completion, it does not follow that proof of reduction to practice is necessary in every case. Indeed, both the facts of the *Telephone Cases* and the facts of this case demonstrate that one can prove that an invention is complete and ready for patenting before it has actually been reduced to practice.'').

34. *Cooper* v. *Goldfarb,* 154 F.3d 1321, 1327, 47 USPQ2d 1896, 1901 (Fed. Cir. 1998). *See also UMC Elecs. Co.* v. *United States,* 816 F.2d 647, 652, 2 USPQ2d 1465, 1468 (Fed. Cir. 1987) (''[T]here cannot be a reduction to practice of the invention * * * without a physical embodiment which includes all limitations of the claim.''); *Estee Lauder Inc.* v. *L'Oreal S.A.,* 129 F.3d 588, 593, 44 USPQ2d 1610, 1614 (Fed. Cir. 1997) (''[A] reduction to practice does not occur until the inventor has determined that the invention will work for its intended purpose.''); *Mahurkar* v. *C.R. Bard Inc.,* 79 F.3d 1572, 1578, 38 USPQ2d 1288, 1291 (Fed. Cir. 1996) (determining that the invention will work for its intended purpose may require testing depending on the character of the invention and the problem it solves).

35. 37 CFR §§ 1.804, 1.809. *See also* endnote 6.

36. *See, e.g., Vas-Cath,* 935 F.2d at 1565, 19 USPQ2d at 1118 (''drawings alone may provide a 'written description' of an invention as required by § 112''); *In re Wolfensperger,* 302 F.2d 950, 133 USPQ 537 (CCPA 1962) (the drawings of applicant's specification provided sufficient written descriptive support for the claim limitation at issue); *Autogiro Co. of America* v. *United States,* 384 F.2d 391, 398, 155 USPQ 697, 703 (Ct. Cl. 1967) (''[I]n those instances where a visual representation can flesh out words, drawings may be used in the same manner and with the same limitations as the specification.'').

37. *See Hybritech* v. *Monoclonal Antibodies,* 802 F.2d at 1384, 231 USPQ at 94; *Fonar Corp.* v. *General Electric Co.,* 107 F.3d at 1549, 41 USPQ2d at 1805 (source code description not required).

38. This is especially true for the mechanical and electrical arts. *See, e.g. , Pfaff* v. *Wells Electronics,* 119 S.Ct. at 312, 48 USPQ2d at 1647.

39. For example, the presence of a restriction enzyme map of a gene may be relevant to a statement that the gene has been isolated. One skilled in the art may be able to determine when the gene disclosed is the same as or different from a gene isolated by another by comparing the restriction enzyme map. In contrast, evidence that the gene could be digested with a nuclease would not normally represent a relevant characteristic since any gene would be digested with a nuclease. Similarly, isolation of an mRNA and its expression to produce the protein of interest is strong evidence of possession of an mRNA for the protein.

Examples of identifying characteristics include a sequence, structure, binding affinity, binding specificity, molecular weight, and length. Although structural formulas provide a convenient method of demonstrating possession of specific molecules, other identifying characteristics or combinations of characteristics may demonstrate the requisite possession. For example, unique cleavage by particular enzymes, isoelectric points of fragments, detailed restriction enzyme maps, a comparison of enzymatic activities, or antibody cross-reactivity may be sufficient to show possession of the claimed invention to one of skill in the art. *See Lockwood,* 107 F.3d at 1572, 41 USPQ2d at 1966 (''written description'' requirement may be satisfied by using ''such descriptive means as words, structures, figures, diagrams, formulas, etc., that fully set forth the claimed invention'').

However, a definition by function alone ''does not suffice'' to sufficiently describe a coding sequence ''because it is only an indication of what the gene does, rather than what it is.'' *Eli Lilly,* 119 F.3 at 1568, 43 USPQ2d at 1406. *See also Fiers,* 984 F.2d at 1169–71, 25 USPQ2d at 1605–06 (discussing *Amgen Inc.* v. *Chugai Pharmaceutical Co.,* 927 F.2d 1200, 18 USPQ2d 1016 (Fed. Cir. 1991)).

40. If a claim limitation invokes 35 U.S.C. § 112, ¶ 6, it must be interpreted to cover the corresponding structure, materials, or acts in the specification and ''equivalents thereof.'' See 35 U.S.C. 112, ¶ 6. *See also B. Braun Medical, Inc.* v. *Abbott Lab.,* 124 F.3d 1419, 1424, 43 USPQ2d 1896, 1899 (Fed. Cir. 1997). If the written description fails to set forth the supporting structure, material or acts corresponding to the means-(or step-) plus-function, the claim may not meet the requirement of 35 U.S.C. 112, ¶ 1. A means-(or step-) plus-function claim limitation satisfies 35 U.S.C. 112, ¶ 1 if: (1) The written description links or associates particular structure, materials, or acts to the function recited in a means-(or step-) plus-function claim limitation; or (2) it is clear based on the facts of the application that one skilled in the art would have known what structure, materials, or acts perform the function recited in a means-(or step-) plus-function limitation. In considering whether there is 35 U.S.C. § 112, ¶ 1 support for the claim limitation, the examiner must consider not only the original disclosure contained in the summary and detailed description of the invention portions of the specification, but also the original claims, abstract, and drawings. See the Interim Supplemental Examination Guidelines for Determining the Applicability of 35 U.S.C. 112 ¶ 6, 64 FR 41392 (July 30, 1999).

41. *See Hybritech Inc.* v. *Monoclonal Antibodies, Inc.,* 802 F.2d at 1384, 231 USPQ at 94.

42. *See, e.g., Vas-Cath,* 935 F.2d at 1563, 19 USPQ2d at 1116; *Martin* v. *Johnson,* 454 F.2d 746, 751, 172 USPQ 391, 395 (CCPA 1972) (stating ''the description need not be in *ipsis verbis* [i.e., ''in the same words'] to be sufficient'').

43. A claim which is limited to a single disclosed embodiment or species is analyzed as a claim drawn to a single embodiment or species, whereas a claim which encompasses two or more embodiments or species within the scope of the claim is analyzed as a claim drawn to a genus. *See also* MPEP § 806.04(e).

44. 35 U.S.C. 112, ¶ 1. *Cf. Fields* v. *Conover,* 443 F.2d 1386, 1392, 170 USPQ 276, 280 (CCPA 1971) (finding a lack of written description because the specification lacked the ''full, clear, concise, and exact written description'' which is necessary to support the claimed invention).

45. For example, if the art has established a strong correlation between structure and function, one skilled in the art would be able to predict with a reasonable degree of confidence the structure of the claimed invention from a recitation of its function. Thus, the written description requirement may be satisfied through disclosure of function and minimal structure when there is a well-established correlation between structure and function. In contrast, without such a correlation, the capability to recognize or understand the structure from the mere recitation of function and minimal structure is highly unlikely. In this latter case, disclosure of function alone is little more than a wish for possession; it does not satisfy the written description requirement. *See Eli Lilly,* 119 F.3d at 1568, 43 USPQ2d at 1406 (written description requirement not satisfied by merely providing ''a result that one might achieve if one made that invention''); *In re Wilder,* 736 F.2d 1516, 1521, 222 USPQ 369, 372–73 (Fed. Cir. 1984) (affirming a rejection for lack of written description because the specification does ''little more than outline goals appellants hope the claimed invention achieves and the problems the invention will hopefully ameliorate''). *Compare Fonar,* 107 F.3d at 1549, 41 USPQ2d at 1805 (disclosure of software function adequate in that art).

46. *See, e.g., In re Hayes Microcomputer Products Inc. Patent Litigation,* 982 F.2d 1527, 1534–35, 25 USPQ2d 1241, 1246 (Fed. Cir. 1992) (''One skilled in the art would know how to program a microprocessor to perform the necessary steps described in the specification. Thus, an inventor is not required to describe every detail of his invention. An applicant's disclosure obligation varies according to the art to which the invention pertains. Disclosing a microprocessor capable of performing certain functions is sufficient to satisfy the requirement of section 112, first paragraph, when one skilled in the relevant art would understand what is intended and know how to carry it out.'')

47. *See, e.g. , Fiers* v. *Revel,* 984 F.2d at 1169, 25 USPQ2d at 1605; *Amgen Inc.* v. *Chugai Pharmaceutical Co.,* 927 F.2d 1200, 1206, 18 USPQ2d 1016, 1021 (Fed. Cir. 1991). Where the process has actually been used to produce the product, the written description requirement for a product-by-process claim is clearly satisfied; however, the requirement may not be satisfied where it is not clear that the acts set forth in the specification can be performed, or that the product is produced by that process.

48. *See, e.g., Amgen Inc.* v. *Chugai Pharmaceutical Co.,* 927 F.2d 1200, 1206, 18

USPQ2d 1016, 1021 (Fed. Cir. 1991)(''A gene is a chemical compound, albeit a complex one, and it is well established in our law that conception of a chemical compound requires that the inventor be able to define it so as to distinguish it from other materials, and to describe how to obtain it. Conception does not occur unless one has a mental picture of the structure of the chemical, or is able to define it by its method of preparation, its physical or chemical properties, or whatever characteristics sufficiently distinguish it. It is not sufficient to define it solely by its principal biological property, *e.g.,* encoding human erythropoietin, because an alleged conception having no more specificity than that is simply a wish to know the identity of any material with that biological property. We hold that when an inventor is unable to envision the detailed constitution of a gene so as to distinguish it from other materials, as well as a method for obtaining it, conception has not been achieved until reduction to practice has occurred, *i.e.,* until after the gene has been isolated.'')(citations omitted). In such instances the alleged conception fails not merely because the field is unpredictable or because of the general uncertainty surrounding experimental sciences, but because the conception is incomplete due to factual uncertainty that undermines the specificity of the inventor's idea of the invention. *Burroughs Wellcome Co.* v. *Barr Laboratories Inc.,* 40 F.3d 1223, 1229, 32 USPQ2d 1915, 1920 (Fed. Cir. 1994). Reduction to practice in effect provides the only evidence to corroborate conception (and therefore possession) of the invention. *Id.*

49. *See Eli Lilly,* 119 F.3d at 1568, 43 USPQ2d at 1406.

50. *See, e.g., Eli Lilly.*

51. For example, in the genetics arts, it is unnecessary for an applicant to provide enough different species that the disclosure will permit one of skill to determine the nucleic acid or amino acid sequence of another species from the application alone. The stochastic nature of gene evolution would make such a predictability nearly impossible. Thus, the Federal Circuit could not have intended that representative number requires predictability of sequences.

52. *See Wertheim,* 541 F.2d at 263, 191 USPQ at 97 (''[T]he PTO has the initial burden of presenting evidence or reasons why persons skilled in the art would not recognize in the disclosure a description of the invention defined by the claims.''). *See also* MPEP § 2163.05.

53. *See* MPEP §§ 714.02 and 2163.06 (''Applicant should * * * specifically point out the support for any amendments made to the disclosure.'').

54. *See, e.g., In re Wright,* 866 F.2d 422, 425, 9 USPQ2d 1649, 1651 (Fed. Cir. 1989)(Original specification for method of forming images using photosensitive microcapsules which describes removal of microcapsules from surface and warns that capsules not be disturbed prior to formation of image, unequivocally teaches absence of permanently fixed microcapsules and supports amended language of claims requiring that microcapsules be ''not permanently fixed'' to underlying surface, and therefore meets description requirement of 35 U.S.C. 112.).

55. *See, e.g., In re Robins,* 429 F.2d 452, 456–57, 166 USPQ 552, 555 (CCPA 1970) (''[W]here no explicit description of a generic invention is to be found in the specification * * * mention of representative compounds may provide an implicit description upon which to base generic claim language.''); *In re Smith,* 458 F.2d 1389, 1395, 173 USPQ 679, 683 (CCPA 1972)(a subgenus is not necessarily implicitly described by a genus encompassing it and a species upon which it reads).

56. *See, e.g., In re Robertson,* 169 F.3d 743, 745, 49 USPQ2d 1949, 1950–51 (Fed. Cir. 1999)(''To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.' '') (citations omitted).

57. When an explicit limitation in a claim ''is not present in the written description whose benefit is sought it must be shown that a person of ordinary skill would have understood, at the time the patent application was filed, that the description requires that limitation.'' *Hyatt* v. *Boone ,* 146 F.3d 1348, 1353, 47 USPQ2d 1128, 1131 (Fed. Cir. 1998).

58. *See, e.g., Johnson Worldwide Associates Inc.* v. *Zebco Corp.,* 175 F.3d at 993, 50 USPQ2d at 1613; *Gentry Gallery, Inc.* v. *Berkline Corp.,* 134 F.3d at 1479, 45 USPQ2d at 1503; *Tronzo* v. *Biomet, Inc.,* 156 F.3d at 1159, 47 USPQ2d at 1833; and *Reiffin* v. *Microsoft Corp.,* 48 USPQ2d at 1277.

59. *See, e.g., In re Marzocchi,* 439 F.2d 220, 224, 169 USPQ 367, 370 (CCPA 1971).

60. *Wertheim,* 541 F.2d at 262, 191 USPQ at 96.

61. *See In re Rasmussen,* 650 F.2d at 1214, 211 USPQ at 326.

62. *See In re Alton,* 76 F.3d 1168, 1176, 37 USPQ2d 1578, 1584 (Fed. Cir. 1996).

Dated: December 16, 1999.

Q. Todd Dickinson,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 99–33053 Filed 12–20–99; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 991027289–9289–01]

RIN 0651–AB09

Revised Utility Examination Guidelines; Request for Comments

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice and request for public comments.

SUMMARY: The Patent and Trademark Office (PTO) requests comments from any interested member of the public on the following Revised Utility Examination Guidelines. The PTO is publishing a revised version of guidelines to be used by Office personnel in their review of patent applications for compliance with the utility requirement based on comments received in response to the Request for Comments on Interim Guidelines for Examination of Patent Applications. Under the 35 U.S.C. 112, ¶ 1 ''Written Description'' Requirement; Extension of Comment Period and Notice of Hearing. 63 FR 50887 (September 23, 1998). These Revised Utility Guidelines will be used by PTO personnel in their review of patent applications for compliance with the ''utility'' requirement of 35 U.S.C. 101. This revision supersedes the Utility Examination Guidelines that were published at 60 FR 36263 (1995) and at 1177 O.G. 146 (1995).

DATES: Written comments on the Revised Utility Examination Guidelines will be accepted by the PTO until March 22, 2000.

ADDRESSES: Written comments should be addressed to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231, marked to the attention of Mark Nagumo, or to Box Comments, Assistant Commissioner for Patents, Washington, DC 20231, marked to the attention of Linda S. Therkorn. Alternatively, comments may be submitted to Mark Nagumo via facsimile at (703) 305–9373 or by electronic mail addressed to ''mark.nagumo@uspto.gov''; or to Linda Therkorn via facsimile at (703) 305–8825 or by electronic mail addressed to ''linda.therkorn@uspto.gov.''

FOR FURTHER INFORMATION CONTACT: Mark Nagumo by telephone at (703) 305–8666, by facsimile at (703) 305–9373, by electronic mail ''mark.nagumo@uspto.gov,'' or by mail marked to his attention addressed to the Commissioner of Patents and Trademarks, Box 8, Washington, DC 20231; or Linda Therkorn by telephone at (703) 305–9323, by facsimile at (703) 305–8825, by electronic mail at ''linda.therkorn@uspto.gov,'' or by mail marked to her attention addressed to Box Comments, Assistant Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The PTO requests comments from any interested member of the public on the following Revised Utility Examination Guidelines. As of the publication date of this notice, this revision will be used by PTO personnel in their review of patent

applications for compliance with the ''utility'' requirement of 35 U.S.C. 101. Because this revision governs internal practices, it is exempt from notice and comment rulemaking under 5 U.S.C. 553(b)(A).

Written comments should include the following information: (1) Name and affiliation of the individual responding, and (2) an indication of whether the comments offered represent views of the respondent's organization or are respondent's personal views.

Parties presenting written comments are requested, where possible, to provide their comments in machine-readable format in addition to a paper copy. Such submissions may be provided by electronic mail messages sent over the Internet, or on a 3.5″ floppy disk formatted for use in a Macintosh, Windows, Windows for Workgroups, Windows 95, Windows 98, Windows NT, or MS–DOS based computer.

Written comments will be available for public inspection on or about April 19, 2000, in Suite 918, Crystal Park 2, 2121 Crystal Drive, Arlington, Virginia. In addition, comments provided in machine readable format will be available through the PTO's Website at http://www.uspto.gov.

I. Discussion of Public Comments

Comments received by the Office in response to the request for public comment on the Interim Written Description Guidelines regarding the patentability of expressed sequence tags (ESTs) suggested the need for revision or clarification of the final Utility Examination Guidelines as published at 60 FR 36263 (1995) and 1177 O.G. 146 (1995). All comments have been carefully considered. Many comments stated that sufficient patentable utility has not been shown when the sole disclosed use of an EST is to identify other nucleic acids whose utility was not known, and the function of the corresponding gene is not known. Moreover, several comments opined that ESTs are genomic research tools that should be available for unencumbered research to advance the public good. One comment stated that asserted utilities for ESTs, such as mapping the genome or tissue typing, would probably not satisfy the requirements of 35 U.S.C. 101 if the length of the attached DNA sequence were greatly extended. Other comments stated that the disclosure of a DNA sequence alone is insufficient to enable scientists to use ESTs for mapping or tissue typing. Some comments suggested that PTO examination procedures would result in granting patents based on nonspecific and nonsubstantial utilities, contrary to established case law. See Brenner v. Manson, 383 U.S. 519, 534–35, 148 USPQ 689, 695 (1966) (requiring disclosure of ''specific utility,'' and of ''substantial utility,'' ''where specific benefit exists in currently available form''); accord, In re Ziegler, 992 F.2d 1197, 1201, 26 USPQ2d 1600, 1603 (Fed. Cir. 1996) (requiring that a specific and substantial or practical utility for the invention be disclosed as a condition of meeting the practical utility requirement of § 101). Consequently, a number of changes have been made to the Utility Examination Guidelines to clarify the position of the Patent and Trademark Office. Updated training material will be developed in the examination corps to address technology-specific issues.

II. Guidelines for Examination of Applications for Compliance With the Utility Requirement

A. Introduction

The following guidelines establish the policies and procedures to be followed by Office personnel in the evaluation of any patent application for compliance with the utility requirements of 35 U.S.C. 101 and 112. These guidelines have been promulgated to assist Office personnel in their review of applications for compliance with the utility requirement. The guidelines do not alter the substantive requirements of 35 U.S.C. 101 and 112, nor are they designed to obviate the examiner's review of applications for compliance with all other statutory requirements for patentability.

B. Examination Guidelines for the Utility Requirement

Office personnel are to adhere to the following procedures when reviewing patent applications for compliance with the ''useful invention'' (''utility'') requirement of 35 U.S.C. 101 and 112, first paragraph.

1. Read the claims and the supporting written description.

(a) Determine what the applicant has claimed, noting any specific embodiments of the invention.

(b) Ensure that the claims define statutory subject matter (i.e., a process, machine, manufacture, composition of matter, or improvement thereof).

2. Review the claims and the supporting written description to determine if the applicant has asserted for the claimed invention any specific and substantial utility that is credible.

(a) If the invention has a well-established utility, regardless of any assertion made by the applicant, do not impose a rejection based on lack of utility. An invention has a well-established utility if a person of ordinary skill in the art would immediately appreciate why the invention is useful based on the characteristics of the invention (e.g., properties or applications of a product or process).

(b) If the applicant has asserted that the claimed invention is useful for any particular practical purpose (i.e., it has a ''specific and substantial utility'') and the assertion would be considered credible by a person of ordinary skill in the art, do not impose a rejection based on lack of utility.

(1) A claimed invention must have a specific and substantial utility. This requirement excludes ''throw-away,'' ''insubstantial,'' or ''nonspecific'' utilities, such as the use of a complex invention as landfill, as a way of satisfying the utility requirement of 35 U.S.C. 101.

(2) Credibility is assessed from the perspective of one of ordinary skill in the art in view of the disclosure and any other evidence of record (e.g., test data, affidavits or declarations from experts in the art, patents or printed publications) that is probative of the applicant's assertions. An applicant need only provide one credible assertion of specific and substantial utility for each claimed invention to satisfy the utility requirement.

(c) If no assertion of specific and substantial utility for the claimed invention made by the applicant is credible, and the claimed invention does not have a well-established utility, reject the claim(s) under section 101 on the grounds that the invention as claimed lacks utility. Also reject the claims under § 112, first paragraph, on the basis that the disclosure fails to teach how to use the invention as claimed. The section 112, first paragraph, rejection imposed in conjunction with a section 101 rejection should incorporate by reference the grounds of the corresponding section 101 rejection.

(d) If the applicant has not asserted any specific and substantial utility for the claimed invention and it does not have a well-established utility, impose a rejection under section 101, emphasizing that the applicant has not disclosed a specific and substantial utility for the invention. Also impose a separate rejection under section 112, first paragraph, on the basis that the applicant has not disclosed how to use the invention due to the lack of a specific and substantial utility. The sections 101 and 112 rejections shift the

burden of coming forward with evidence to the applicant to:

(1) Explicitly identify a specific and substantial utility for the claimed invention; and

(2) Provide evidence that one of ordinary skill in the art would have recognized that the identified specific and substantial utility was well established at the time of filing. The examiner should review any subsequently submitted evidence of utility using the criteria outlined above. The examiner should also ensure that there is an adequate nexus between the showing and the application as filed.

3. Any rejection based on lack of utility should include a detailed explanation why the claimed invention has no specific and substantial credible utility. Whenever possible, the examiner should provide documentary evidence (e.g., scientific or technical journals, excerpts from treatises or books, or U.S. or foreign patents) to support the factual basis for the *prima facie* showing of no specific and substantial credible utility. If documentary evidence is not available, the examiner should specifically explain the scientific basis for his or her factual conclusions.

(a) Where the asserted specific and substantial utility is not credible, a *prima facie* showing of no specific and substantial credible utility must establish that it is more likely than not that a person skilled in the art would not consider credible any specific and substantial utility asserted by the applicant for the claimed invention.

The *prima facie* showing must contain the following elements:

(1) An explanation that clearly sets forth the reasoning used in concluding that the asserted specific and substantial utility is not credible;

(2) Support for factual findings relied upon in reaching this conclusion; and

(3) An evaluation of all relevant evidence of record.

(b) Where no specific and substantial utility is disclosed or known, a *prima facie* showing of no specific and substantial utility must establish that it is more likely than not that a person skilled in the art would not be aware of any well-established credible utility that is both specific and substantial.

The *prima facie* showing must contain the following elements:

(1) An explanation that clearly sets forth the reasoning used in concluding that there is no known well established utility for the claimed invention that is both specific and substantial;

(2) Support for factual findings relied upon in reaching this conclusion; and

(3) An evaluation of all relevant evidence of record.

4. A rejection based on lack of utility should not be maintained if an asserted utility for the claimed invention would be considered specific, substantial, and credible by a person of ordinary skill in the art in view of all evidence of record.

Office personnel are reminded that they must treat as true a statement of fact made by an applicant in relation to an asserted utility, unless countervailing evidence can be provided that shows that one of ordinary skill in the art would have a legitimate basis to doubt the credibility of such a statement. Similarly, Office personnel must accept an opinion from a qualified expert that is based upon relevant facts whose accuracy is not being questioned; it is improper to disregard the opinion solely because of a disagreement over the significance or meaning of the facts offered.

Once a *prima facie* showing of no specific and substantial credible utility has been properly established, the applicant bears the burden of rebutting it. The applicant can do this by amending the claims, by providing reasoning or arguments, or by providing evidence in the form of a declaration under 37 CFR 1.132 or a printed publication that rebuts the basis or logic of the *prima facie* showing. If the applicant responds to the *prima facie* rejection, the Office personnel should review the original disclosure, any evidence relied upon in establishing the *prima facie* showing, any claim amendments, and nay new reasoning or evidence provided by the applicant in support of an asserted specific and substantial credible utility. It is essential for Office personnel to recognize, fully consider and respond to each substantive element of any response to a rejection based on lack of utility. Only where the totality of the record continues to show that the asserted utility is not specific, substantial, and credible should a rejection based on lack of utility be maintained.

If the applicant satisfactorily rebuts a *prima facie* rejection based on lack of utility under section 101, withdraw the § 101 rejection and the corresponding rejection imposed under section 112, first paragraph.

Dated: December 16, 1999.

Q. Todd Dickinson,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 99–33054 Filed 12–20–99; 8:45 am]

BILLING CODE 3510–16–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 20, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: December 15, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Application for grants under Disability and Rehabilitation Research.

Frequency: Annually.

Affected Public: Not-for-profit institutions; individuals or households; businesses or other for-profit; State, local, or Tribal Government, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 805. Burden Hours: 16,100.

Abstract: The National Institute on Disability and Rehabilitation Research (NIDRR) provides grants for research and related activities in Rehabilitation of Individuals with disabilities. The grant application package contains program profiles, standard forms, program regulations, sample rating forms, and transmitting instructions. Applications are primarily institutions of higher education, but may also include hospitals, State Rehabilitation education agencies and voluntary and profit organizations.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address OCIO __ IMG __ Issues@ed.gov or should be faxed to 202–708–9346.

Questions regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila __ Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–32971 Filed 12–20–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 20, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 16, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement

Title: Robert C. Byrd Honors Scholarship Program Performance Report

Frequency: Annually

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs

Reporting and Recordkeeping Hour Burden:

Responses: 1

Burden Hours: 148

Abstract: This information is required of State agencies that administer the Robert C. Byrd Honors Scholarship Program under Title IV, Part A, Subpart 6 of the Higher Education Act of 1965, as amended and administered under 34 CFR Part 654. This information is used to monitor the compliance of the state educational agencies.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or should be faxed to 202–708–9346.

Questions regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe__Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–33078 Filed 12–20–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, January 5, 2000: 6 p.m.–9 p.m.

ADDRESSES: Embassy Suites Hotel, 4315 Swenson Street, Las Vegas, NV.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513, phone: 702–295–0197.

SUPPLEMENTARY INFORMATION: *Purpose of the Board*: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Presentation and discussion on Stewardship.

2. Discussion regarding the Underground Testing Area recommendation and letter.

3. Review of the SSAB's comments on the Draft Yucca Mountain Environmental Impact Statement.

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC on December 16, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–33046 Filed 12–20–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB) Oak Ridge. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, January 5, 2000: 6:00–9:30 p.m.

ADDRESSES: Garden Plaza Hotel, 215 South Illinois Street, Oak Ridge, TN.

FOR FURTHER INFORMATION CONTACT: Carol Davis, Federal Coordinator/Ex-Officio Officer, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, (423) 576–0418.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. ''EPA's Role in Federal Facilities Restoration,'' presented by Mr. Richard Green, Director of Waste Management Division, EPA Region 4.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Carol Davis at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 7:30 a.m. and 5:30 p.m. Monday through Friday, or by writing to Carol Davis, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (423) 576–0418.

Issued at Washington, DC on December 16, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–33047 Filed 12–20–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, January 6, 2000: 6 p.m.–9:30 p.m.

ADDRESSES: College Hill Library, 3705 West 112th Avenue, Westminster, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Risk Assessments Workshop, with Bonnie LaVelle of EPA Region VIII.

2. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9:00 a.m. to 4:00 p.m. Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC on December 16, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–33048 Filed 12–20–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration, DOE.

ACTION: Agency information collection activities: Proposed collection; comment request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments on the proposed revision and extension of approval to the Form EIA–902, ''Annual Geothermal Heat Pump Manufacturers Survey.''

DATES: Written comments must be submitted on or before February 22, 2000. If you anticipate difficulty in submitting comments within that period, contact the person identified below as soon as possible.

ADDRESSES: Send comments to Peter Holihan, Energy Information Administration (EI–52), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Alternatively, Mr. Holihan may be reached by phone at (202) 426–1147, by e-mail James.Holihan@eia.doe.gov, or by FAX (202) 426–1311.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Mr. Holihan at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the Department of Energy Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the Energy Information Administration (EIA) to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) of the collections under Section 3507(h) of the Paperwork Reduction Act of 1995.

The Form EIA–902 collects information on shipments of geothermal heat pumps. The survey tracks shipments of the following three main types of geothermal heat pumps, as classified by the Air Conditioning & Refrigeration Institute (ARI), and the much smaller shipped volume of non-ARI rated systems. A brief description of the ARI-classified system is as follows:

ARI 320—Water-Source Heat Pumps (WSHP)—These systems are installed in commercial buildings, where a central chiller or boiler supplies chilled or heated water, respectively, to heat pumps installed in series. The heat pumps reject building heat to chilled water during the cooling season and, during the heating season, take heat from boiler water.

ARI 325—Ground Water-Source Heat Pumps (GWHP)—The GWHP is an open-loop system in which ground water is drawn from an aquifer or other natural body of water into piping. At the heat pump, heat is drawn from or dumped to the water through a heat exchanger to the refrigerant in the heat pump. The heated or cooled water returns to its source.

ARI 330—Ground Source Closed-Loop Heat Pumps (GSHP)—A water or water/glycol (antifreeze) solution flows continuously through a closed loop of pipe buried underground. Ground heat is absorbed into or rejected from the solution flowing in the closed loop. At the heat pump, heat is drawn from or dumped to the closed loop solution via heat transfer through a heat exchanger, which passes heat to or removes heat from the refrigerant in the heat pump. Depending on the type of ground and land area, systems can either be installed horizontally or vertically.

Data are collected by model type, heat pump capacity, region of destination, customer type, and economic sector. Respondents are all U.S. geothermal heat pump manufacturers.

II. Current Actions

EIA will be requesting a three-year extension of Office of Management and Budget approval to continue using Form EIA–902 through 2003.

III. Request for Comments

Prospective respondents and other interested persons are invited to comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

General Issues:

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

B. Can information be submitted by the due date?

C. Public reporting burden for this collection is estimated to average four hours per response. The estimated burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose and provide the information. Please comment on the accuracy of the estimate.

D. The agency estimates respondents will incur no additional costs for reporting other than the hours required to complete the collection. What is the estimated: (1) total dollar amount annualized for capital and start-up costs; and (2) recurring annual costs of operation and maintenance, and purchase of services associated with this data collection?

E. What additional actions could be taken to minimize the burden of this collection of information, including the use of information technology? For example, should the agency develop additional electronic methods (e.g., forms and instruction on diskettes, touch tone data entry, forms that may be completed and submitted directly through the Internet, and data submission by fax or e-mail) for respondents to submit information?

F. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the method(s) of collection.

As a Potential User:

A. Is the information useful at the levels of detail indicated on the form?

B. For what purpose(s) would the information be used? Be specific.

C. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, December 15, 1999.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 99–33049 Filed 12–20–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11614–001]

Allison Lake Hydro; Notice of Surrender of Preliminary Permit

December 15, 1999.

Take notice that Allison Lake Hydro, permittee for the proposed Allison Lake Project, has requested that its preliminary permit be terminated. The permit was issued on November 20, 1998, and would have expired on October 31, 2001. The project would have been located on Allison Lake and Creek in Valdez County, Alaska.

The permittee filed the request on November 15, 1999, and the preliminary permit for Project No. 11614 shall remain in effect through the thirtieth day after issuance of this notice unless that day is Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32951 Filed 12–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–13–000]

Jones Black River Services, Inc; Notice of Withdrawal

December 15, 1999.

Take notice that on December 2, 1999, Jones Black River Services, Inc. withdrew its application for determination of exempt wholesale generator status filed in the above-captioned proceeding.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before January 6, 2000, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection or on the Internet at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32944 Filed 12–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1354–005]

Pacific Gas & Electric Company; Notice of Telephone Conference

December 15, 1999.

The Commission staff, U.S. Forest Service and Pacific Gas & Electric Company (PG&E) will conduct a telephone conference at 2 p.m. Eastern Standard Time (EST), on December 21, 1999, to update staff on Forest Service and PG&E points of view on whether certain lands should be included within the boundary of the Crane Valley Project No. 1354 and on how such an issue might affect PG&E's application for new license in this proceeding.

Parties in the new license application proceeding wishing to take part in the conference call may do so by calling (800) 545–4387 on December 21, 1999 and informing the operator that they want to be part of the Crane Valley Project conference call and giving the operator the conference call identification number M–57609. The operator will start accepting requests to be a part of the conference call at 1:45 p.m. EST prior to the 2 p.m. EST meeting. If you have any questions regarding this notice, please contact Charles Hall at (202) 219–2853 or send e-mail to charles.hall@ferc.fed.us.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32947 Filed 12–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–417–001, et al.]

Virginia Power and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

December 13, 1999.

Take notice that the following filings have been made with the Commission:

1. Virginia Electric and Power Company

[Docket No. ER99–417–001]

Take notice that on November 16, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing a refund report as directed by the Commission's Order of October 28, 1999 in this proceeding. Under the tendered refund report, Virginia Power demonstrated the calculation of the amounts collected in excess of the settlement rates accepted by the Commission, together with interest computed under Section 35.19a of the Commission's Regulations.

Copies of the filing were served upon the Public Service Commission of West Virginia, the Virginia State Corporation Commission and the North Carolina Utilities Commission and all parties of record.

Comment date: December 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. California Independent System Operator Corporation

[Docket No. ER99–4545–001]

Take notice that on December 7, 1999, the California Independent System Operator Corporation (ISO), tendered for

filing a Notice to Market of Ability to File Disputes on Final Settlement Statements (Notice) which was sent to Market Participants on December 3, 1999 and posted on the ISO Home Page. The Notice states that, effective with Final Settlement Statements published on December 15, 1999 for Trade Date October 1, 1999, the ISO will accept settlement disputes of Incremental Changes that occur between Preliminary and Final Settlement Statements, in accordance with the terms of Amendment No. 22 to the ISO Tariff.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: December 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Pacific Gas and Electric Company

[Docket No. ER00–657–000]

Take notice that on December 6, 1999, Pacific Gas and Electric Company (PG&E), tendered for filing errata to its November 23, 1999, filing of agreements between PG&E and East Bay Municipal Utility District (EBMUD) providing for special facilities and the parallel operation of EBMUD's Pardee and Camanche Powerhouses and PG&E's electrical system. The errata correct dates, footnotes and adds missing line diagrams.

Copies of this filing have been served upon EBMUD and the CPUC.

Comment date: December 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Avista Corporation

[Docket No. ER00–732–000]

Take notice that on December 6, 1999, Avista Corporation, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, an unexecuted Service Agreement under Avista Corporation's FERC Electric Tariff First Revised Volume No. 10, with Public Utility District No. 1 of Pend Oreille County. The unexecuted Service Agreement will be replaced by an executed Service Agreement upon approval and receipt from the Public Utility District No. 1 of Pend Oreille County Commission Board.

Avista Corporation requests waiver of the prior notice requirements and requests an effective date of November 10, 1999.

Notice of this filing has been served upon Mr. Dick L. Arkills, Director, Power Supply & Engineering, Pend Oreille PUD.

Comment date: December 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Pool

[Docket No. ER00–733–000]

Take notice that on December 6, 1999, the New England Power Pool (NEPOOL or the Pool) Participants Committee tendered for filing a request for termination of memberships in NEPOOL, with a retroactive effective date of October 1, 1999, of Barton Village, Inc., Village of Enosburg Falls Electric Light Department, Hardwick Electric Department, Village of Hyde Park, Village of Jacksonville, Inc., Electric Company, The Village of Ludlow Electric Light Department, Village of Lyndonville Electric Department, Village of Morrisville Water & Light Department, Northfield Electric Department, Orleans Electric, Stowe Electric Department and Swanton Village (collectively, the Terminating Vermont Municipals). Such terminations are pursuant to the terms of the NEPOOL Agreement dated September 1, 1971, as amended, and previously signed by the Terminating Vermont Municipals. The NEPOOL Agreement, as amended (the NEPOOL Agreement), has been designated NEPOOL FPC No. 2.

The Participants Committee requests a retroactive termination to October 1, 1999 to accommodate to the extent possible, given NEPOOL procedural requirements, the requests made by the Terminating Vermont Municipals for early termination of their memberships. The Participants Committee states that such terminations of the Terminating Vermont Municipals will not impact charges under the NEPOOL Agreement to any other Participant, will have no adverse impact on NEPOOL operations or the operations of any continuing Participant, and would not change the NEPOOL Agreement in any manner, other than to remove the Terminating Vermont Municipals from membership in the Pool.

Comment date: December 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Puget Sound Energy, Inc.

[Docket No. ER00–734–000]

Take notice that on December 6, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Tacoma City Light (Tacoma).

A copy of the filing was served upon Tacoma.

Comment date: December 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Puget Sound Energy, Inc.

[Docket No. ER00–735–000]

Take notice that on November 6, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Southern Company Services, Inc., (Southern).

A copy of the filing was served upon Southern.

Comment date: December 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Puget Sound Energy, Inc.

[Docket No. ER00–736–000]

Take notice that on December 6, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Southern Company Energy Marketing, L.P., (SCEM).

A copy of the filing was served upon SCEM.

Comment date: December 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. California Independent System Operator Corporation

[Docket No. ER00–737–000]

Take notice that on December 6, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Participating Generator Agreement between El Dorado Energy, LLC (El Dorado) and the ISO for acceptance by the Commission.

The ISO states that this filing has been served on El Dorado and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be effective as of November 23, 1999.

Comment date: December 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. California Independent System Operator Corporation

[Docket No. ER00–738–000]

Take notice that on December 6, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities between El Dorado Energy, LLC (El Dorado) and the ISO for acceptance by the Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be effective as of November 23, 1999.

The ISO states that this filing has been served on El Dorado and the California Public Utilities Commission.

Comment date: December 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Avista Corporation

[Docket No. ER00–739–000]

Take notice that on December 7, 1999, Avista Corporation tendered for filing, with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, an executed Mutual Netting Agreement allowing for arrangements of amounts which become due and owing to one Party to be set off against amounts which are due and owing to the other Party with El Paso Power Service Company.

Avista Corporation requests waiver of the prior notice requirement and requests an effective date of November 1, 1999.

Comment date: December 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Merrill Lynch Capital Services, Inc.

[Docket No. ER00–740–000]

Take notice that on December 7, 1999, Merrill Lynch Capital Services, Inc., (MLCS), tendered for filing pursuant to section 35.13 of the Commission's Regulations under the Federal Power Act (18 CFR 35.13) and Section 205 of the Commission's Rules of Practice and Procedure (18 CFR 385.205), revisions to its FERC Electric rate Schedule No. 1, the purpose of which is to permit MLCS to resell firm transmission rights.

Comment date: December 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Canal Emirates Power International, Inc.

[Docket No. ER00–741–000]

Take notice that on December 7, 1999, Canal Emirates Power International, Inc. (Canal) petitioned the Federal Energy Regulatory Commission (Commission), for acceptance of Canal Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electric energy and capacity and ancillary services at market-based rates; and the waiver of certain Commission regulations.

Canal owns a 50 MW cogeneration facility located in Binghamton, New York. Canal intends to operate that facility for the purpose of engaging in wholesale sales of electric energy and capacity, and ancillary services, to customers in the restructured New York electricity market at market-based rates. The shareholders of Canal are two individuals that do not have any ownership interest in a franchised electric utility. Canal also does not own or control any transmission facilities (other than limited interconnection facilities). Canal has no affiliates.

Canal also requested waiver of the 60-day prior notice requirement to allow Canal Rate Schedule FERC No. 1 to become effective February 1, 2000.

Comment date: December 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. California Independent System Operator Corporation

[Docket No. ER00–742–000]

Take notice that on December 7, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and Sierra Pacific Power Company (Sierra Pacific) for acceptance by the Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Scheduling Coordinator Agreement to be made effective December 1, 1999.

The ISO states that this filing has been served on Sierra Pacific and the California Public Utilities Commission.

Comment date: December 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. PPL Martins Creek, LLC; PPL Montour, LLC; PPL Brunner Island, LLC; PPL Holtwood, LLC; and PPL Susquehanna, LLC

[Docket No. ER00–744–000]

Take notice that on December 7, 1999, PPL Martins Creek, LLC, PPL Montour, LLC, PPL Brunner Island, LLC, PPL Holtwood, LLC and PPL Susquehanna LLC (collectively Applicants), tendered for filing an Application for Authority to Sell Electric Energy, Capacity and Ancillary Services at Market-Based Rates, to Resell Transmission Rights and Associated Ancillary Services and for Acceptance of Power Sales Agreements, in connection with a proposed corporate realignment of PP&L Resources, Inc.

Comment date: December 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

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, 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 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. 99–32943 Filed 12–20–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 349–058]

Alabama Power Company; Notice of Availability of Environmental Assessment

December 15, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, the Office of Hydropower Licensing has reviewed the application requesting the Commission's authorization to permit Mr. Donald F. Seibert (permitee) to reconstruct and expand the existing Anchor Bay Marina and has prepared an Environmental Assessment (EA) for the proposed action.

This 65-year-old facility, formerly known as Castaway Island Marina, experienced deferred maintenance when it was operated by its previous owner. Moreover, 48 of the marina's 70 covered wet slips were destroyed, and several of its other structures experienced extensive damage in 1995 as the result of Hurricane Opal. The permitee proposes to implement a three-year redevelopment plan that would enable the marina to accommodate 180 boats in the water and an additional 250 boats in storage.

Anchor Bay Marina is situated in the southwestern portion of Lake Martin, which was formed in 1926 after the completion of Alabama Power Company's Martin Dam on the Tallapoosa River.

In the EA, Commission staff does not identify any significant impacts that would result from Commission's approval of the proposed marina redevelopment. Further, staff finds that Commission-imposed mitigative or enhancement measures are not needed

at the site to protect the area's environmental resources. Thus, staff concludes that approval of the proposed amendment of license would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA can be viewed at the Commission's Public Reference Room, Room 2A,888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. The EA also may be viewed on the Web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

For further information, please contact Jim Haimes at (202) 219–2780.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32946 Filed 12–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4718–011]

Cocheco Falls Associates; Notice of Availability of Draft Environmental Assessment

December 15, 1999.

A draft environmental assessment (DEA) is available for public review. The DEA is for petitions to revise the license for the Cocheco Falls Project with respect to fish passage. The DEA recommends reasonable modifications to project structures and operation to benefit fish passage and that such modifications would not constitute a major federal action significantly affecting the quality of the human environment.

The DEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the DEA can be viewed in the Reference and Information Center, Room 2A, of the Commission's Offices at 888 First Street, NE, Washington, DC 20426.

Comments on the DEA are invited. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers for substance should be supported by appropriate documentation. Comments should be filed within 60 days from the date of this notice with David P. Boergers, Secretary, 888 First Street, NE, Washington, DC 20426, and should reference Project No. 4718.

For further information, please contact the project manager, Mr. Robert H. Grieve, at (202) 219–2655.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32950 Filed 12–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2177–037]

Georgia Power Company; Notice of Availability of Environmental Assessment

December 15, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, the Office of Hydropower Licensing has received the application requesting the Commission's authorization to permit the Smiths Water and Sewer Authority (Authority) to increase the rate of water withdrawal at its existing pumping station at Lake Oliver reservoir to 8.0 million gallons per day and has prepared an Environmental Assessment (EA) for the proposed action.

Existing facilities at the Authority's water pumping station are able to accommodate the increased water withdrawal; consequently, the proposed action would not require any new construction activity.

Lake Oliver, the reservoir formed by Oliver Dam, is the second of three impoundments that comprise the Middle Chattahoochee Project. The project's three developments abut one another over a 16-mile-long distance of the Chattahoochee River.

In the EA, Commission staff does not identify any significant impacts that would result from Commission's approval of the proposed additional water withdrawal from Lake Oliver reservoir. Further, staff finds that Commission-imposed mitigative or enhancement measures are not needed at the site to protect the area's environmental resources. Thus, staff concludes that approval of the proposed amendment of license would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. The EA also may be viewed on the Web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

For further information, please contact Jim Haimes at (202) 219–2780.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32949 Filed 12–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted For Filing With The Commission and Soliciting Motions To Intervene and Protest

December 15, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major License.

b. *Project No.:* P–2631–007.

c. *Date Filed:* August 31, 1999.

d. *Applicant:* International Paper Company.

e. *Name of Project:* Woronoco Hydroelectric Project.

f. *Location:* On the Westfield River in the Town of Russell, Hampden County, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Ted Lewellyn, P.E., International Paper Company, Paper Mill Road, Millers Falls, MA 01349, (413) 659–2337

Michael K. Chapman, Esq., International Paper Company, 6400 Poplar Avenue, Memphis, TN 38197, (901) 763–5888

Jon Christensen, Kleinschmidt Associates, 75 Main Street, Pittsfield, ME 04967, (207) 487–3328

i. *FERC Contact:* Allan Creamer (202) 219–0365 or E-mail at allan.creamer@ferc.fed.us.

j. *Deadline for Filing Motions to Intervene and Protest:* February 4, 2000.

k. *Status of Environmental Analysis:* This application has been accepted for filing, but is not ready for environmental analysis at this time—see attached paragraph E1.

l. *Description of Project:* The proposed run-of-river project would consist of the following features: (1) two non-contiguous dam sections, with lengths of about 307 feet (North dam) and 351 feet (South dam), and a crest elevation of 229 feet NGVD; (2) a 655-foot-long earthen dike with a sheet steel core; (3) a 40-foot-wide by 15-foot-high intake structure, having trashracks with 1.25-inch clear bar spacing; (4) a 550-foot-long penstock; (5) a powerhouse

containing three Francis turbines and generating units, having an installed capacity of 2,700 kW; (6) a 43-acre impoundment that extends approximately 1.2 miles upstream; (7) an interim downstream fish passage facility; and (8) appurtenant facilities. The applicant estimates that the total average annual generation would be approximately 7,700 MWh. No federal lands are affected by the proposed project.

m. *Purpose of Project:* The power generated by the project is sold on the local power grid. If the adjacent mill facilities and the hydro station (both owned by International Paper Company) is sold to a manufacture, power generated by the proposed project could be used to run the mill as well as be sold on the local power grid.

o. *Availability of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files and Maintenance Branch, located at 888 First Street, NE, Room 2–A, Washington, DC 20426, or by calling (202) 219–1371. A copy of the application may be viewed or printed by accessing the Commission's website at http://www.ferc.fed.us/online/rims.htm, or call (202) 208–2222 for assistance. Copies are also available for inspection and reproduction at International Power Company, Paper Mill Road, Millers Falls, Massachusetts 01349 and through the Town of Russell, Robert P. Drake, Chairman, Board of Selectman, Town of Russell, Russell, Massachusetts 01071.

Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32945 Filed 12–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 1980–009 and 1759–036 et al.]

Notice of Public Meetings; Wisconsin Electric Power Co. and Norway, WI; Upper Menominee River Basin Projects

December 15, 1999.

In the matter of: Wisconsin Electric Power Company; Project Nos. 1980–009, 1759–036, 2072–008, 2073–008, 2074–007, 2131–020, 11830–000, and 11831–000. Upper Menominee River Basin Hydroelectric Projects; Project No. 2471–005, Sturgeon Plant Project: City of Norway; Project No. 2720–032, Sturgeon Falls Project; Notice of Public Meetings.

Pursuant to the Energy Policy Act of 1992, and as part of the license applications, Wisconsin Electric Power Company (hereinafter, referred to as ''WE'') prepared an Applicant-Prepared Environmental Assessment (APEA) for the Upper Menominee River Basin Projects and filed it with the Federal Energy Regulatory Commission (Commission) on October 1, 1999. WE also filed with the Commission a surrender application and APEA for the Sturgeon Plant Project (P–2471–005). The City of Norway filed with the Commission an amendment of license and APEA for the Sturgeon Falls Project (P–2720–032).

Two public meetings will be held, pursuant to the National Environmental Policy Act of 1969, to solicit comments about the Upper Menominee River Basin Projects, the Sturgeon Plant Project, and the Sturgeon Falls Project. The meetings will be held on Wednesday, March 1, 2000, from 1:00 to 4:00 p.m. and from 7:00 to 10:00 p.m. The meetings will be at the Premier Center, located at 300 East F Street, Iron Mountain, in Iron County, Michigan. The public meetings are open to all interested parties.

Meeting Procedures

The public meetings will be conducted according to the procedures used at Commission scoping meetings. The public meetings will be recorded by a stenographer and, thereby, will become a part of the formal record of the proceedings. Individuals presenting statements at the meetings will be asked to identify themselves for the record.

Concerned parties are encouraged to offer verbal guidance during public meetings. Speaking time allowed for individuals will be determined at the beginning of each meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session, but all speakers will be provided at least ten minutes to present their views.

Persons choosing not to speak but wishing to express an opinion, as well as speakers unable to summarize their positions within the allotted time, may submit written statements for inclusion in the public record.

Written public comments may also be mailed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, by March 10, 2000. Correspondence should clearly show the following caption on the first page for each separate proceeding: (1) Public Meeting Comments, Upper Menominee River Basin Hydroelectric Projects, FERC Nos. 1980–009, 1759–036, 2072–008, 2073, 2074–007, 2131–020, 11830–000, and 11831–000; (2) Public Meeting Comments, Sturgeon Plant Project, FERC No. 2471–005; or (3) Public Meeting Comments, Sturgeon Falls Project, FERC No. 2720–032.

For further information, please contact Ms. Patti Leppert-Slack at the Commission, (202) 219–2767.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32948 Filed 12–20–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6512–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; the SunWise School Program

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 EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): The SunWise School Program, Stratospheric Protection Division, EPA ICR No. 1904.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 22, 2000.

ADDRESSES: Office of Atmospheric Programs, Stratospheric Protection Division, U.S. Environmental Protection Agency, 401 M Street, SW (6205J), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kristin Kenausis, (202) 564–2289, (202) 565–2095 (fax), *kenausis.kristin@epa.gov* or visit the SunWise website at www.epa.gov/sunwise.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are elementary and middle school students, parents, teachers (SIC Div. I: Group 8211), and school administrators (SIC Div. I: Group 8211).

Title: SunWise School Program; EPA ICR No. 1904.01.

Abstract: The goal of the SunWise School Program is to teach children and their care givers how to protect themselves from overexposure to the sun. The SunWise School Program recognizes the challenge of measuring the progress and evaluating the effectiveness of an environmental and public health education program where the ultimate goal is to reduce risk and improve public health. Therefore, the continual and careful evaluation of program effectiveness through a variety of means, including data from pre- and post-intervention surveys, tracking and monitoring of classroom activities and school policies, and advisory board meetings, is necessary to monitor progress and refine the program. Surveys to be developed and administered include: (1) Student survey to identify current sun safety knowledge and behaviors among students; (2) Parent survey to compare findings with those of their children as well as to draw comparisons with the benchmarks established in other national surveys; (3) Teacher questionnaire for measuring their receptivity to the educational component of the Program; and (4) School administrator questionnaire to show receptivity to the SunWise School Program and its standards, such as the educational component, proposed policy changes, and school practices with the Program. The data will be analyzed and results will indicate the Program's effect on participants' sun-protection attitudes and behaviors. Responses to the collection of information are voluntary. All responses to the collection of information remain anonymous and confidential. 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.

EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: 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. The SunWise School Program will conduct four different surveys, targeting four distinct audiences.

(A) Number to be surveyed annually	(B) Total hours burden	(C) Rate per hour ($)	(D) Total cost (D=B*C)
3,000 Students	3,000	0	0
1,000 Teachers	500	$36.88	$18,440.00
1,000 Parents	250	20.29	5,072.50
1,000 School Administrators	250	35.18	8,795.00
Total (Annual)	4,000	.....	32,307.50
ICR Total (3 years)	12,000	.....	96,922.50

Dated: December 14, 1999.

Drusilla Hufford,

Director, Stratospheric Protection Division.

[FR Doc. 99–33032 Filed 12–20–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–867A; FRL–6098–2]

Allergenicity Assessment of Cry9C BT Corn Plant Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Agency is soliciting input on the assessment of the potential for allergenicity of non-digestible proteins expressed as plant-pesticides. The specific case in question concerns the Cry9C insecticidal protein derived from *Bacillus thuringiensis* and expressed in field corn. In addition to EPA data evaluation records, the Agency is asking for comment on questions within an EPA background document regarding the use of amino acid homology, the brown Norway rat model, and other items regarding the assessment for potential allergenicity. This issue will also be one of the subjects of a FIFRA Science Advisory Panel (SAP) meeting in early February, 2000.

DATES: Comments, identified by docket control number PF–867A, must be received on or before February 22, 2000. The actual meeting date and other details will be announced in a subsequent **Federal Register** publication.

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 PF–867A in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: John Kough or Mike Mendelsohn, OPP/ BPPD (751lC), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308 8267 or (703) 308–8715; tax number: (703) 308–7026; e-mail address: kough.john@epa.gov or mendelsohn.mike @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 those persons who are technical experts in human allergenicity or those persons who may be required to conduct testing to assess the potential for the allergenicity of non-digestible proteins expressed as plant-pesticides under the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). 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 in the ''FOR FURTHER INFORMATION CONTACT'' section.

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 (including copies of EPA's data evaluation records, and the list of questions regarding allergenicity) that might be available electronically, from the EPA's Biopesticide Internet Home Page at http:/ /www.epa.gov/pesticides/ biopesticides. 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 PF–867A. The official record consists of the documents specifically referenced in this action (including copies of EPA's health effects reviews, the list of selected technical experts that comprise the technical peer review committee, and the list of questions regarding allergenicity), any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–867A 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*. You may submit your comments electronically by E-mail to: ''opp-docket@epa.gov,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–867A. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record.

Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the ''FOR FURTHER INFORMATION CONTACT'' section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

• Explain your views as clearly as possible.

• Describe any assumptions that you used.

• Provide copies of any technical information and/or data you used that support your views.

• If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

• Provide specific examples to illustrate your concerns.

• Offer alternative ways to improve the rule or collection activity.

• Make sure to submit your comments by the deadline in this notice.

• 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?

On April 7, 1999, EPA announced the receipt of a pesticide petition (PP 9F5050) (64 FR 16965) (FRL–6069–8) from AgrEvo USA Company. The petition, 9F5050, proposed an amendment to 40 CFR 180.1192 to expand the current exemption from the requirement of a tolerance for *Bacillus thuringiensis* subspecies tolworthi Cry9C protein and the genetic material necessary for its production in corn from corn used for feed only (and associated residues in meat, poultry, milk, or eggs resulting from animals fed such feed) to all food commodities. EPA has completed it's initial review of the data submitted in support of this petition and is and is soliciting public comment on the data evaluation records, and a list of questions regarding human allergenicity assessment for non-digestible proteins expressed as plant-pesticides. This issue will also be one of the subjects of a FIFRA Science Advisory Panel (SAP) meeting in early February 2000.

B. What is the Agency's Authority for Taking this Action?

The Agency is soliciting input to aid in determining whether there is a reasonable certainty of no harm for the proposed expansion of the exemption from the requirement of a tolerance under the Federal Food, Drug and Cosmetic Act (FFDCA).

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 9, 1999.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 99–32871 Filed 12–17–99; 9:17 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6511–9]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Consent Decree; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed partial consent decree, which was lodged with the United States District Court for the District of Columbia by the United States Environmental Protection Agency (''EPA'') on December 1, 1999, to address a lawsuit filed by the Natural Resources Defense Council, Environmental Defense Fund, Conservation Law Foundation, Clean Air Council, Natural Resources Council of Maine, and Sierra Club (collectively referred to as ''NRDC''). This lawsuit, which was filed pursuant to section 304(a) of the Act, 42 U.S.C. 7604(a), addresses EPA's alleged failure to meet a mandatory deadline under section 110(c) of the Act, 42 U.S.C. 7410(c), to promulgate federal implementation plans establishing attainment demonstrations for certain ozone nonattainment areas classified as serious or severe and located in the eastern part of the United States and to impose sanctions in those areas. *NRDC* v. *EPA*, No. 1:99CV02976 (D.D.C.).

DATES: Written comments on the proposed consent decree must be received by January 20, 2000.

ADDRESSES: Written comments should be sent to Jan M. Tierney, Air and Radiation Law Office (2344–A), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Copies of the proposed consent decree are available from Phyllis J. Cochran, (202) 564–7606. A copy of the proposed consent decree was lodged with the Clerk of the United States District Court for the District of Columbia on December 1, 1999.

SUPPLEMENTARY INFORMATION: NRDC alleges that EPA has a mandatory duty to promulgate federal implementation plans (FIPs) and impose sanctions on 10 nonattainment areas located in 13 States and the District of Columbia. There are four areas that are classified as serious ozone nonattainment areas for the 1-hour ozone standard: Greater Connecticut located in Connecticut; Metropolitan Washington located in Washington, DC, Maryland and Virginia; Springfield/Western Massachusetts located in Massachusetts; and Atlanta located in Georgia. There are six areas classified as severe ozone nonattainment for the 1-hour ozone standard: New York-Northern New Jersey-Long Island located in Connecticut, New York and New Jersey; Philadelphia-Wilmington-Trenton located in Pennsylvania, Delaware, Maryland, and New Jersey; Baltimore located in Maryland; Houston-Galveston-Brazoria located in Texas; Chicago-Gary-Lake County located in Illinois and Indiana; and Milwaukee-Racine located in Wisconsin.

The proposed partial consent decree provides, in part, that EPA will promulgate full attainment FIPs by May 15, 2001 for the serious areas without fully approved attainment demonstration SIPs as of that date and will promulgate full attainment demonstration FIPs by June 14, 2002 for the severe areas without fully approved attainment demonstration SIPs as of that date. In addition, the consent decree provides for the FIP promulgation dates to be advanced (to February 28, 2001 for serious areas and July 31, 2001 for severe areas) if by May 31, 2000, EPA does not either (1) find that for purposes of transportation conformity the areas have adequate motor vehicle emissions budgets associated with submitted attainment demonstration SIPs, or (2) disapprove the submitted attainment demonstration SIPs. Finally, the consent decree provides that plaintiffs will file for dismissal of two lawsuits that are pending in the United States Court of Appeals for the District of Columbia Circuit and that were filed by some or all of the plaintiffs in the District Court

case. These two cases are: *Delaware Valley Citizens' Council for Clean Air* v. *Browner,* No. 96–1316 (D.C. Cir.) (challenge to EPA's findings of failure to submit certain portions of the attainment demonstration), and *Delaware Valley Citizens' Council for Clean Air* v. *Browner,* No. 98–1079 (D.C. Cir.) (challenge to EPA's ''Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM10 NAAQS,'' issued by Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, dated December 29, 1997 (63 FR 8196 (Feb. 18, 1998)).

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent decree from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, following the comment period, that consent is inappropriate, the final consent decree will be entered with the court and will establish deadlines for promulgation of federal implementation plans in the absence of approved state plans.

Dated: December 9, 1999.

Gary S. Guzy,

General Counsel.

[FR Doc. 99–32862 Filed 12–20–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6512–9]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement concerning the Crews Plating Superfund site, with Mr. Kent McNair.

The settlement requires the settling party to pay a total of $27,301.44 as payment of past response costs to the Hazardous Substances Superfund. The settlement includes a covenant not to sue pursuant to section 107 of CERCLA, 42 U.S.C. 9607.

For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733.

DATES: Comments must be submitted on or before January 20, 2000.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733. A copy of the proposed settlement may be obtained from Carl Bolden, 1445 Ross Avenue, Dallas, Texas 75202–2733 at (214) 665–6713. Comments should reference the Crews Plating Superfund Site, Dallas, Dallas County, Texas, and EPA Docket Number 6–21–99, and should be addressed to Carl Bolden at the address listed above.

FOR FURTHER INFORMATION CONTACT: Michael Boydston, 1445 Ross Avenue, Dallas, Texas 75202–2733 at (214) 665–7376.

Dated: December 15, 1999.

Myron O. Knudson,

Acting Regional Administrator, Region 8.

[FR Doc. 99–33024 Filed 12–20–99; 8:45 am]

BILLING CODE 6560–50–M

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Science and Technology Policy

Request for Comment on Proposed Statement of Principles of the Government-University Research Partnership

AGENCY: Office of Science and Technology Policy.

ACTION: Request for comment on proposed statement of principles of the government-university research partnership.

SUMMARY: An April 27, 1999 Presidential Memorandum directed that the National Science and Technology Council ''in consultation with research universities and other stakeholders in the Federal science and technology enterprise, shall develop a statement of principles that clearly articulates the roles, responsibilities, and expectations of each of the partners and establishes a framework for addressing future issues as they arise. Ultimately, this statement of principles will serve to shape future discussions and guide policy development and decision making.'' President Clinton asked that this action be completed within twelve months of the date of the memorandum. The findings and recommendations contained in the NSTC report on Renewing the Federal Government-University Research Partnership for the 21st Century should provide the basis for proceeding. The report proposed a draft statement of principles developed by the NSTC and recommended that it be finalized in consultation with the interested community. As part of this process, this notice seeks public comment.

DATES: The Office of Science and Technology Policy welcomes comments on the proposed policy. In order to be assured consideration, comments must be postmarked no later than February 18, 2000.

ADDRESSES: Written comments should be mailed to Dr. Arthur Bienenstock, Associate Director for Science, Office of Science and Technology Policy, Washington, DC 20502. The entire NSTC report may be viewed electronically by going to the following web site: *http://www.whitehouse.gov/WH/EOP/OSTP/html/rand/index.htm.* In order to provide comments electronically, click on ''Your comments,'' then on ''Click here to provide your electronic comments.''

FOR FURTHER INFORMATION CONTACT: Anne-Marie Mazza, Office of Science and Technology Policy, Executive Office of the President, Washington, DC 20502. Tel: 202–456–6040; Fax: 202–456–6027; e-mail: *amazza@ostp.eop.gov.*

SUPPLEMENTARY INFORMATION: In order for the partnership between the Federal government and the university community to thrive, there must be a clear understanding on the part of both parties of the goals of the partnership and the responsibilities of the partners. The following questions sometimes arise in consideration of this partnership: Why does the Federal government invest in university research? What is the role of graduate students in the research enterprise? On what basis are the costs of research allocated among the parties? Federal

laws, circulars, and regulations govern operational aspects of the government-university relationship in areas such as allowable costs, administrative procedures, compliance issues, and audit practices. Yet statements of the rationale, goals, and objectives of the public investment in university-based research remain implicit, or are dispersed in a variety of legislation and other policy documents. As long as this is so, the government-university partnership risks being defined primarily in an ad hoc manner, by detailed accounting, administrative, and financial management requirements, and not by broader national goals.

In addition to the Presidential Memorandum to the NSTC cited above, the President also released on April 27, 1999 the NSTC report on Renewing the Federal Government-University Research Partnership for the 21st Century. One of the recommendations contained in this report is the development of a statement of principles of the government-university partnership in research. A clearly articulated statement of the principles of the partnership will help clarify the roles, responsibilities, and expectations of each of the partners and establish a framework for addressing future issues as they arise. Ultimately, an agreed upon statement of principles also would serve to shape future discussions, to formulate policies, and to help guide decision-making. The process itself of engaging the government and university partners in a dialogue will increase mutual understanding and provide a good foundation for resolving complex issues in the future. The purpose of this notice is to help further this dialogue.

The NSTC report issued a proposed statement of the principles of the government-university partnership (see below). These were developed through interagency review and discussion that benefited greatly from input provided by the university community. Further dialogue is needed among all stakeholders before the principles are finalized.

The goals in developing a statement of principles are to help foster an environment that promotes scientific discovery, technological innovation, and the development of the next generation of scientists and engineers. The Federal government recognizes the importance to the nation of the American university system and is driven by a desire to sustain that special resource for maximum benefit to the nation. A statement of principles will help articulate these goals, and provide guidance for translating these goals into actions. In order to be most effective, these principles must be understood and agreed upon by the parties to it.

Below is the proposed statement of principles:

Proposed Statement of Principles of the Government-University Research Partnership

The following are guiding principles that govern interactions between the Federal government and universities that perform research.

1. Guiding Principles

• Research Is an Investment in the Future.

Government sponsorship of university research—including the capacity to perform research and the training of the next generation of scientists and engineers—is an investment in the future of the nation, helping to assure the health, security, and quality of life of our citizens. Government investments recognize that the expected benefits of research often accrue beyond the investment horizons of corporations or other private sponsors. Investments in research are managed as a portfolio, with a focus on aggregate returns; investments in individual research efforts that make up the portfolio are based on the prospects for their technical success, though not on a presumption that those outcomes can be predicted precisely.

• The Linkage Between Research and Education Is Vital.

The integration of research and education is the hallmark and strength of our nation's universities. Students (undergraduates as well as graduates) who participate in federally sponsored research grow intellectually even as they contribute to the research enterprise. Upon graduation, they are prepared to contribute to the advancement of national goals and to educate subsequent generations of scientists and engineers. Their intellectual development and scientific contributions are among the important benefits to the Nation of Federal support for research conducted at universities. There should be compelling policy reasons for creating or perpetuating financial or operational distinctions between research and education. Our scientific and engineering enterprise is further enhanced by the intellectual stimulation brought to campus by students from varying cultural, ethnic, and socioeconomic origins.

• Excellence Is Promoted When Investments are Guided by Merit Review.

Excellence in science and engineering is promoted by making awards on the basis of merit. Merit review assesses the quality of the proposed research or project and is often used in combination with a competitive process to determine the allocation of funds for research. Merit review relies on the informed advice of qualified individuals who are independent of those individuals proposing the research. A well-designed merit review system rewards quality and productivity in research, and can accommodate endeavors that are high-risk and have potential for high gain.

• Research Must Be Conducted with Integrity.

The ethical obligations entailed in accepting public funds and in the conduct of research are of the highest order and recipients must consider the use of these funds as a trust. Great care must be taken to ''do no harm'' and to act with integrity. The credibility of the entire enterprise relies on the integrity of each of its participants.

2. Operating Principles

The following operating principles are intended to assist agencies, universities, individual investigators, and auditing and regulatory bodies in implementing the guiding principles.

• Agency Cost Sharing Policies and Practices Must be Transparent.

As in any investment partnership, each partner contributes to the research endeavor. While the primary contribution of universities is the intellectual capital of the researchers' ideas, knowledge, and creativity, it is sometimes appropriate for universities to share in the costs of the research (and in some cases cost sharing is required by statute). Cost sharing can be appropriate when there are compelling policy reasons for it, such as in programs whose principal purpose is to build infrastructure and enhance an awardee's institution's ability to compete for future Federal awards. Cost sharing is rarely appropriate when an awardee is acting solely as a supplier of goods or services to the government since this would entail a university subsidy of goods purchased by the government. If agency funds are not sufficient to cover the costs of a research project, the agency and the university should re-examine the scope of the project, unless there are compelling policy reasons to require university cost sharing. Agencies should be clear about their cost sharing policies and announce when and how cost sharing will figure in selection processes, including explicit information regarding the amount of cost sharing expected.

• Partners Should Respect the Merit Review Process.

Excellence in science is promoted when all parties adhere to merit review

as the basis for distributing Federal funds for research projects and refrain from seeking Federal funds through non-merit-based means. Federal investments in research are made with the expectation that the research community will select promising research paths more productively and wisely by relying on merit review than can a process that bypasses merit review to directly fund a specific individual or institution. Success in obtaining funds outside the merit review system can be discouraging to researchers who participate in the process. Most significantly, bypassing merit review threatens to undermine research excellence. Merit review may be used in conjunction with other selection criteria to support agency or program goals.

• Agencies and Universities Should Manage Research in a Cost-Efficient Manner.

The goal of all those involved in sponsoring, performing, administering, regulating, and auditing university-based research and associated educational activities of the research enterprise should be to make maximum resources available for the performance of research and education. This goal can be accomplished by keeping agencies' and universities' costs of compliance with Federal requirements to the minimum required for good stewardship of Federal funds. For example, administrative requirements should rely on the least burdensome and least costly methods that can effectively provide needed stewardship. Universities should likewise manage their Federal grants as efficiently as possible.

• Accountability and Accounting Are Not the Same.

The principal measure of accountability must be research outcomes: have the researchers carried out a program of research consistent with their commitment to the government? Financial accountability is also important and should assure research sponsors that Federal funds have been used properly to achieve the goals of the research in a cost effective manner. Federal agencies must ensure that financial accountability requirements are limited to those that are reasonably required for good stewardship and that each measure adds sufficient value in terms of increased stewardship to justify the burdens and costs it imposes on universities and agencies.

• The Benefits of Simplicity in Policies and Practices Should Be Weighed Against the Costs.

The costs and benefits of simplicity in regulatory, administrative, cost accounting, and auditing practices should be assessed against the costs and benefits of accommodating diverse Federal programs and the multiplicity of university organizational structures in determining best policies and practices. ''One size fits all,'' or uniformity for uniformity's sake can unintentionally increase requirements and burdens, but a multiplicity of practices can also be costly. These tradeoffs should be carefully assessed whenever changes in government-wide or agency-specific policies and practices are proposed.

• Change Should be Justified by Need and the Process Made Transparent.

The process of change in the government-university partnership should be made as transparent as possible. Modifications in administrative, regulatory, or auditing requirements, or in cost sharing expectations, should be kept as infrequent as possible, consistent with the need to respond to changing circumstances. The impact of change in one part of the system should be understood relative to the whole. Reasonable time should be allowed for both agencies and universities to adapt to change.

Dated: December 15, 1999.

Barbara Ann Ferguson,

Administrative Officer, Office of Science and Technology Policy.

[FR Doc. 99–32962 Filed 12–20–99; 8:45 am]

BILLING CODE 3170–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 99–332; FCC 99–348]

Making the Frequency 156.250 MHz Available for Port Operations Purposes in Los Angeles and Long Beach, CA Ports

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Order portion of this document states that the Commission generally holds in abeyance and will not process pending applications for public safety pool frequencies of 156.240 and 156.2475 MHz within 100 miles of the geographic center of Los Angeles. The Commission takes this action to stop processing applications while it considers a proposal to utilize the frequency 156.250 MHz for port operations in the Los Angeles and Long Beach area.

DATES: Effective November 15, 1999.

FOR FURTHER INFORMATION CONTACT: James Shaffer of the Commission's Wireless Telecommunications Bureau at (202) 418–0680.

SUPPLEMENTARY INFORMATION:

1. This is a summary of the Commission's *Notice of Proposed Rule Making and Order* FCC 99–348, adopted on November 15, 1999, and released on November 19, 1999. The full text of this *Notice of Proposed Rule Making and Order* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY A257, 445 12th Street, S.W., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W. Washington, D.C. 20037.

2. Effective upon the adoption date of this *Notice of Proposed Rule Making and Order,* no applications for public safety pool frequencies of 156.240 and 156.2475 MHz within 100 miles of the geographic center of Los Angeles will be accepted for filing during the pendency of the *Notice of Proposed Rule Making and Order*. Any applications received on or after this date will be returned as unacceptable for filing.

3. Our decision to impose the freeze on Public Safety Pool frequencies of 156.240 and 156.2475 MHz within 100 miles of the geographic center of Los Angeles is procedural in nature and therefore the freeze is not subject to the notice and comment and effective date requirements of the Administrative Procedures Act. *See* 5 U.S.C. 553(b)(A), (d); Kessler v. FCC, 326 F.2d 673 (D.C. Cir. 1963). Moreover, there is good cause for the Commission's not using notice and comment procedures in this case, or making the freeze effective 30 days after publication in the **Federal Register**, because to do so would be impractical, unnecessary, and contrary to the public interest because compliance would undercut the purpose of the freeze. *See* 5 U.S.C. 553(b)(A), (d)(3).

Ordering Clauses

4. Authority for issuance of this *Notice of Proposed Rule Making and Order* is contained in Sections 4(i), 4(j), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 403.

5. NOTICE IS HEREBY GIVEN and COMMENT IS SOUGHT on the proposed regulatory changes described in the *Notice of Proposed Rule Making and Order,* as set forth in Proposed rules.

6. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this *Notice of Proposed*

Rule Making and Order, including the Initial Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

7. IT IS FURTHER ORDERED that effective upon the release date of this *Notice of Proposed Rule Making and Order,* no applications will be accepted for filing for the public safety frequencies of 156.240 and 156.2475 MHz within 100 miles of the geographic center of Los Angeles, defined as 34° 03′ 15″ north latitude and 118° 14′ 28″ west longitude. This freeze will continue until the Commission makes an announcement that such applications acceptance will resume.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–32930 Filed 12–20–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3153–EM]

Massachusetts; Amendment No. 3 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the Commonwealth of Massachusetts (FEMA–3153–EM), dated December 6, 1999, and related determinations.

EFFECTIVE DATE: December 13, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective December 13, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–33010 Filed 12–20–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

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 14, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. U.S. Trust Corporation, New York, New York, and NCT Holdings, Inc. Greensboro, North Carolina; to acquire 100 percent of the voting shares of U.S. Trust Company of North Carolina, Greensboro, North Carolina. NCT Holdings, Inc., also has applied to become a bank holding company.

B. Federal Reserve Bank of Atlanta (Cynthia Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

*1. Wewahitchka State Bank Employee Stock Ownership Plan,*Wewahitchka, Florida; to acquire 43 percent of the voting shares of Gulf Coast Community Bancshares, Inc., Wewahitchka, Florida, and thereby indirectly acquire Wewahitchka State Bank, Wewahitchka, Florida.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Valley View Bancshares, Inc., Overland Park, Kansas; to acquire 90 percent of the voting shares of Bank of Lee's Summit, Lee's Summit, Missouri.

D. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Bank of Whitman ESOP, Colfax, Washington; to acquire 44 percent of the voting shares of Whitman Bancorporation, Colfax, Washington, and thereby indirectly acquire Bank of Whitman, Colfax, Washington.

In connection with this application, Applicant also has applied to acquire B.O.W.F.I., Inc., Colfax, Washington, and thereby engage in making and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, December 15, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–32932 Filed 12–20–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Establishment of the Federal Trade Commission Advisory Committee on Online Access and Security and Request for Nominations

AGENCY: Federal Trade Commission.

ACTION: Notice and request for nominations.

SUMMARY: The Federal Trade Commission (''Commission'' or ''FTC'') has established an Advisory Committee on Online Access and Security (''Advisory Committee''). The purpose of the Advisory Committee is to provide advice and recommendations to the Commission regarding implementation of certain fair information practices by domestic commercial Web sites—specifically, providing online consumers reasonable access to personal information collected from and about them and maintaining adequate security for that information. The Commission also seeks nominations of individuals for appointment to the Advisory Committee.

DATES: The Advisory Committee will meet on February 4, 2000; February 25, 2000; March 31, 2000; and April 28, 2000. Nominations for Advisory Committee membership must be submitted on or before January 5, 2000.

ADDRESSES: The Advisory Committee will meet in Room 432, Federal Trade

Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. Advisory Committee meetings will be open to the public. Parties interested in submitting nominations should send an original and two copies to the Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, NW, Washington, DC 20580. Nominations should be captioned ''Advisory Committee on Online Access and Security—Nomination, P004807.'' To enable prompt review and public access, paper submissions should be accompanied by a version on diskette in ASCII, WordPerfect (please specify version) or Microsoft Word (please specify version) format. Diskettes should be labeled with the name of the submitter, the Advisory Committee caption, and the name and version of the word processing program used to create the document. Alternatively, nominations may be submitted to the following email address: advisorycommittee@ftc.gov. The public may also submit comments in the manner designated for nominations.

FOR FURTHER INFORMATION CONTACT: Laura Mazzarella, Division of Financial Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Mail Stop 4429, Washington, DC 20580, telephone (202) 326–3424, email lmazzarella@ftc.gov; or Hannah Stires, Division of Financial Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Mail Stop 4429, Washington, DC 20580, telephone (202) 326–3178, email hstires@ftc.gov.

SUPPLEMENTARY INFORMATION:

Authority: 15 U.S.C. 41 *et seq.*; 5 U.S.C. App. §§ 1–15; 16 CFR Part 16.

In accordance with the requirements of Section 9 of the Federal Advisory Committee Act, 5 U.S.C. App. § 9(a)(2), and Part 16 of the Commission's regulations, 16 CFR 16.5(d), the Commission has directed publication of this notice that it has established an Advisory Committee on Online Access and Security. The Commission certifies that creation of the Advisory Committee is necessary and in the public interest because it will further the Commission's work in fostering and evaluating self-regulatory efforts to protect consumer privacy online. By this Notice, the Commission is also requesting nominations for members to serve on the Advisory Committee.

1. Background

The Commission has been involved in addressing online privacy issues for almost five years.[1] Throughout its online privacy efforts, the Commission's goal has been to understand the emerging online marketplace and its information practices, to assess the impact of these practices on consumers, and to encourage and facilitate effective self-regulation as the preferred approach to protecting consumer privacy online.

The Commission has issued two reports to Congress describing the status of domestic commercial Web sites' implementation of fair information practices. In Privacy Online: A Report to Congress (June 1998) (''1998 Report''), the Commission described the well-settled fair information practice principles of (1) Notice/Awareness; (2) Choice/Consent; (3) Access/Participation; (4) Integrity/Security; and (5) Enforcement/Redress. The 1998 Report assessed existing self-regulatory efforts in light of these fair information practice principles and set out findings of the Commission's extensive survey of commercial Web sites' information practices. The 1998 Report concluded that an effective self-regulatory system had yet to emerge and that additional incentives were required in order to ensure that consumer privacy would be protected.[2]

In a follow-up report entitled Self Regulation and Privacy Online: A Report to Congress (July 1999) (''1999 Report''), the Commission noted that a recent Georgetown University study had found a significant improvement in the number of Web sites meeting the fair information practice principle of notice/awareness. The Commission also noted that significant challenges remain for industry self-regulation, particularly the full implementation of all fair information practice principles identified in the 1998 Report. Recognizing that providing reasonable access to and adequate security for personal information collected from and about online consumers raises a number of implementation issues for online businesses, the Commission announced its intention to convene a task force to examine these issues.[3]

2. The Advisory Committee

Pursuant to Section 9 of the Federal Advisory Committee Act, 5 U.S.C. App. § 9(c), the Commission has charged the Advisory Committee with providing advice and recommendations to the Commission regarding implementation of certain fair information practices by domestic commercial Web sites—specifically, providing online consumers reasonable access to personal information collected from and about them and maintaining adequate security for that information. The Advisory Committee will consider the parameters of reasonable access to personal information and adequate security and report to the Commission on options for implementation of these information practices.

The Advisory Committee will consider, among other things, whether the extent of access provided by Web sites should vary with the sensitivity of the personal information collected and/or the purpose for which such information is collected; whether the difficulty and costs of retrieving consumers' data should be considered; whether consumers should be provided access to enhancements to personal information collected directly from them, such as inferences about their preferences and information about them derived from other databases; appropriate and feasible methods for verifying the identity of individuals seeking access; whether a reasonable fee should be assessed for access, and if so, what a reasonable fee would be; and whether limits should be placed on the frequency of requests for access, and if so, what those limits should be.

The Advisory Committee will also consider how to define the standards by which the adequacy of measures taken by Web sites to protect the security of personal information collected online may be judged; what might constitute reasonable steps to assure the integrity of this information; and what managerial and technical measures should be undertaken to protect this information from unauthorized use or disclosure.

The Advisory Committee will conduct its work in accordance with the provisions of the Federal Advisory Committee Act. The agency will provide

[1] The Commission held its first public workshop on privacy in April 1995. Since then, the Commission has held a series of hearings and workshops focusing on online privacy, including most recently a public workshop on Online Profiling sponsored jointly with the Department of Commerce on November 8, 1999. The Commission and its staff have also issued several reports addressing consumer protection issues, including online privacy, in the electronic marketplace. See, e.g., Individual Reference Services: A Federal Trade Commission Report to Congress (December 1997); FTC Staff Report: Public Workshop on Consumer Privacy on the Global Information Infrastructure (December 1996); FTC Staff Report: Anticipating the 21st Century: Consumer Protection Policy in the New High-Tech, Global Marketplace (May 1996).

[2] With respect to the protection of children's privacy online, the Commission recommended that Congress enact legislation. 1998 Report at 42–43. Congress subsequently enacted the Children's Online Privacy Protection Act of 1998, 15 U.S.C. § 6501 *et seq.*, and authorized the Commission to promulgate regulations implementing the Act. The Commission's final rule was issued in October 1999. 16 CFR Part 312 (1999).

[3] 1999 Report at 14.

necessary support services to the Advisory Committee. The duties of the Advisory Committee will be solely advisory; determinations of actions to be taken and policy to be expressed with respect to matters upon which the Advisory Committee provides advice or recommendations shall be made solely by the Commission.

The Advisory Committee will meet in Room 432, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC, on February 4, 2000; February 25, 2000; March 31, 2000; and April 28, 2000. Meetings of the Advisory Committee will be open to the public. Meetings of subgroups of the full Advisory Committee will likely occur more frequently. Subgroups will report to the Advisory Committee only. The Advisory Committee will present its written report describing options for implementing reasonable access to, and adequate security for, personal information collected online, and the costs and benefits of each option, by May 15, 2000. The Advisory Committee will conclude its work on May 31, 2000.

Fifteen days after publication of this notice in the **Federal Register**, a copy of the Advisory Committee's charter will be filed with the Secretary of the Federal Trade Commission, the Committee on Commerce, Science, and Transportation of the United States Senate, and the Committee on Commerce of the United States House of Representatives. A copy of the charter will also be furnished to the Library of Congress and posted on the Commission's Web site at www.ftc.gov. The charter will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Federal Trade Commission regulations, 16 CFR 4.9, Monday through Friday between the hours of 8:30 a.m. and 5 p.m. in Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

The Commission will provide additional information about Advisory Committee meetings, including meeting times and agendas, in the **Federal Register** and on the Commission's Web site, www.ftc.gov.

3. Nominations for Advisory Committee Membership

The Advisory Committee will include approximately thirty members who are appointed for a limited term, to begin on February 4, 2000, and to end on May 31, 2000, and who serve at the discretion of the Commission. In selecting Advisory Committee members, the agency will appoint individuals who can represent effectively the broad range of interests affected by commercial Web sites' collection of personal information from and about online consumers, including online businesses, trade associations, privacy and consumer groups, and experts in interactive technology.

Nominees should have expertise in the issues and/or technologies relevant to the implementation of fair information practices by commercial Web sites. Nominees must be able to attend all Advisory Committee meetings and to participate in good faith in the tasks undertaken by the Advisory Committee. Members of the Committee will serve without compensation and will bear the cost of their own travel-related expenses. Employees of the United States Government are not eligible to serve as members of the Advisory Committee.

Advisory Committee members will be selected on the basis of the following criteria:

1. The individual's participation would promote a balance of points of views represented and functions to be performed by the Advisory Committee.

2. The individual has expertise in or knowledge of the issues that are the focus of the Advisory Committee's work.

3. The individual adequately reflects the views of the relevant affected interest(s).

Interested persons may nominate themselves or others for Advisory Committee membership. Nominations should include a summary of the nominee's qualifications and of the interests he or she can represent and should be submitted in the form and manner described above on or before January 5, 2000. At its discretion, the agency may also appoint Advisory Committee members according to the above criteria in order to insure that committee membership is balanced in terms of points of view and that the relevant interests are represented. The agency will notify members of their selection as soon as possible after January 20, 2000.

By direction of the Commission.

Donald S. Clark,

Secretary of the Commission.

[FR Doc. 99–33015 Filed 12–20–99; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

Expansion of Small Business Participation in Ten (10) Targeted Industry Categories Under the Small Business Competitiveness Demonstration Program

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice.

SUMMARY: The General Services Administration (GSA) is publishing its revised list of the ten (10) targeted industry categories for expanded small business participation in acquisitions. Title VII of the ''Business Opportunity Development Reform Act of 1988'' (Public Law 100–656) required GSA to implement a program to expand small business participation in the agency's acquisitions of selected products and services in 10 industry categories where historically small business participation had been low despite adequate numbers of small business contractors in the economy. Criteria for determining products and services in the ten (10) targeted industry categories were (1) the products or services were purchased in substantial quantities by the Federal Government, (2) less than ten (10) percent annually was purchased from small business concerns, and (3) the industries had significant amounts of small business productive capacity that had not been utilized by the Government. The Small Business Credit and Business Opportunity Enhancement Act of 1992 (Public Law 102–366) extended the program through September 30, 1996. In 1997, the Small Business Reauthorization Act of 1997, was enacted into law. As a result, the program is extended indefinitely. GSA's past participation in awarding contracts to small businesses in selected industry categories targeted for expansion has been successful by either meeting or exceeding 10 percent. Therefore, GSA recognized the need to select ten (10) new targeted industry categories. The Office of Federal Procurement Policy (OFPP) directed agencies in the **Federal Register** dated June 2, 1999, to publish an announcement to solicit public comments on its agency program for expansion of small business participation in the targeted categories. GSA's program includes the following selected targeted industry categories:

SIC	Description
2392 ..	House Furnishings.
2393 ..	Mattresses and Bedsprings.
2621 ..	Paper Mills.
2656 ..	Sanitary Food Containers.

SIC	Description
2679 ..	Converted Paper Products.
3519 ..	Internal Combustion Engines.
3631 ..	Household Cooking Equipment.
3633 ..	Household Laundry Equipment.
3951 ..	Pens and Mechanical Pencils.
4813 ..	Telephone Communications (Except Radio).

DATES: Public comments on GSA's program for expansion of small business participation in the above targeted categories should be submitted in writing to the address shown below on or before January 5, 2000.

ADDRESSES: Mail comments to General Services Administration, Office of Acquisition Policy, GSA Acquisition Policy Division (MVP), 1800 F Street, NW, Room 4027, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Cecelia L. Davis, GSA Acquisition Policy Division, (202) 219–0202.

Dated: December 16, 1999.

J. Les Davison,

Acting Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 99–33077 Filed 12–20–99; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality; Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality (AHRQ), formerly known as the Agency for Health Care Policy and Research (AHCPR).

ACTION: Notice.

SUMMARY: This notice announces that the Agency for Healthcare Research and Quality (AHRQ) is planning to request the Office of Management and Budget (OMB) to allow a proposed information collection of the ''1999–2001 Medical Expenditure Panel Survey—Insurance Component (MEPS–IC)'' In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on October 13, 1999 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by January 20, 1999.

ADDRESSES: Written comments should be submitted to the OMB Desk Office at the following address: Alison Eydt, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, OMB; New Executive Office Building, Room 10235; Washington, 20503.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Cynthia D. McMichael, AHRQ Reports Clearance Officer, (301) 594–3132.

SUPPLEMENTARY INFORMATION:

Proposed Project

''1999–2001 Medical Expenditure Panel Survey—Insurance Component (MEPS–IC).''

The MEPS–IC, an annual survey of the characteristics of employer-sponsored health insurance, was first conducted by AHRQ in 1997, seeking data pertaining to the calendar year 1996. The survey has since been conducted annually for calendar years 1997 and 1998.

This survey will be conducted for AHRQ by the Bureau of the Census using a sample comprised of:

1. Employers selected from Census Bureau lists of private sector employers and government employers (known as the List Sample); and
2. Employers identified by respondents to the MEPS-Household Component (MEPS–HC) for the same calendar year (known as the Household Sample).

Data to be collected from each employer will include a description of the business (e.g., size, industry) and description of health insurance plans available, plan enrollments, total plan costs and costs to employees.

Data Confidentiality Provisions

The MEPS–IC List Sample data confidentiality is protected under section 9 of Title 13, United States Code (the U.S. Census Bureau statute). MEPS–IC Household Sample data confidentiality is protected under sections 308(d) and 903(c) of the Public Health Service Act (42 U.S.C. 242m and 42 U.S.C. 299a–1). Section 308(d), the confidentiality statute of the National Center for Health Statistics, is applicable because the MEPS–HC sample is derived from respondents of an earlier NCHS survey. Section 903(c) is the confidentiality statute that applies to all identifiable data collected pursuant to AHRQ's statutory authorities. All data products listed below must fully comply with the data confidentiality statute under which the raw data was collected.

Data Products

Data will be produced in three forms: (1) Files derived from the Household Sample, which can be linked back to other information from household respondents in the MEPS–HC; (2) files containing employer information from the List Sample (available for use by researchers at the Census Bureau's Research Data Centers); and (3) a large compendium of tables of estimates based on the List Sample (available on the AHRQ website). These tables will contain descriptive statistics, such as, numbers of establishments offering health insurance, average premiums, average contributions, total enrollments, numbers of self insured establishments and other related statistics for a large number of population subsets defined by firm size, state, industry and establishment characteristics, such as, age, profit/nonprofit status and union/nonunion.

The data are intended to be used for purposes such as:

- Generating national and State estimates of employer health care offerings;
- Producing estimates to support the Bureau of Economic Analysis within the Department of Commerce and the Health Care Financing Administration in their respective calculations of health care expenditures for the Gross Domestic Product and National Health Accounts (annual totals for various categories of health care expenditures for the United States);
- Producing national and State estimates of spending on employer-sponsored health insurance to study the results of national and State health care policies;
- Supplying data for modeling the demand for health insurance; and
- Providing data on health plan choices, costs, and benefits that can be linked back to households' use of health care resources as were reported in the MEPS–HC survey for studies of the consumer health care selection process.

These data will provide the basis for researchers to address important questions for the benefit of employers and policymakers alike.

Method of Collection

The data will be collected using a combination of modes. The Census Bureau's first contact with employers will be made by telephone.

This contact will solicit and gather information on the availability of health

insurance from that employer and essential persons to contact. Based upon this information, Census will mail a questionaire to the employer. In order to assure high response rates, Census will follow-up with a second mailing at an acceptable interval, followed by a telephone call to collect data from those who have not responded by mail. For large organizational respondents with high burdens, such as State employers and very large firms, Census will, if needed, perform personal visits and do customized collection, such as, acceptance of data in computerized formats and use of special forms.

Estimated Annual Respondent Burden

Annual number of respondents	Estimated hours per respondent	Estimated total annual burden hours	Estimated annual cost to the government
33,839	.5	19,369	$7,000,000

Estimates of annual respondent burden are based upon experience from collection of the previous three MEPS—IC surveys.

Copies of these proposed collection plans and instruments can be obtained from the AHRQ Reports Clearance Officer (see above).

Dated: December 15, 1999.

John M. Eisenberg,

Director.

[FR Doc. 99–32942 Filed 12–20–99; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–5322]

United States Department of Agriculture, Food Safety and Inspection Service; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the United States Department of Agriculture, Food Safety and Inspection Service has filed a petition proposing that the food additive regulations be amended to increase the maximum dose of ionizing radiation permitted in the treatment of poultry products, include specific language intended to clarify the poultry products covered by the regulations, and remove the limitation that any packaging used during irradiation of poultry shall not exclude oxygen.

FOR FURTHER INFORMATION CONTACT: Rudaina H. Alrefai, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 100 C St. SW., Washington, DC 20204, 202–418–3034.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9M4696) has been filed by the United States Department of Agriculture, Food Safety and Inspection Service, 300 12th St. SW., rm. 112, Washington, DC 20250. The petition proposes to amend the food additive regulations in § 179.26 *Ionizing radiation for the treatment of food* (21 CFR 179.26) in item 6. of the table in paragraph (b) to: (1) Increase the maximum dose of ionizing radiation permitted in the treatment of poultry products (2) include specific language intended to clarify the poultry products covered by the regulations and (3) remove the limitation that any packaging used during irradiation of poultry shall not exclude oxygen.

The agency has determined under 21 CFR 25.32(j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: December 3, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–33004 Filed 12–20–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–5125]

Draft Guidance on the Labeling for Over-the-Counter Sample Collection Systems for Drugs of Abuse Testing; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Guidance on Labeling for Over-the-Counter Sample Collection Systems for Drugs of Abuse Testing.'' This guidance is neither final nor is it in effect at this time. This guidance provides labeling recommendations for over-the-counter sample collection systems for drugs of abuse testing and is being issued as a result of FDA's proposed reclassification of over-the-counter sample collection systems for drugs of abuse testing as class I restricted devices.

DATES: Submit written comments concerning this draft guidance by March 22, 2000.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance. Submit written requests for single copies on a 3.5″ diskette of the draft guidance document entitled ''Guidance on Labeling for Over-the-Counter Sample Collection Systems for Drugs of Abuse Testing'' to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818.

Submit written comments on this draft guidance to the Dockets Management Branch, (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Joseph Hackett, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3084.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 5, 1998 (63 FR 10792), FDA published a proposed rule that would reclassify over-the-counter (OTC) sample collection systems for drugs of abuse testing from class III (premarket approval) to class I (general controls),

and would exempt them from the premarket notification (510(k)) and current good manufacturing practice (CGMP) requirements. The proposal would also restrict these devices under section 520(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(e)) to require the following: (1) The laboratory test(s) incorporated into these systems would be required to have been cleared, approved, or otherwise recognized by FDA as accurate and reliable for laboratory use; (2) the laboratory performing the underlying test(s) must be able to reliably perform the necessary screening and confirmatory tests; and (3) the samples must be adequately identified to avoid mix-ups and the test sample collection system must be accurately labeled so that consumers can readily use it. The draft guidance will help manufacturers meet this third criterion if the regulation becomes final and also can be used by manufacturers currently marketing these products under FDA's Interim Policy regarding ''Parents' Access to Tests for Drugs of Abuse.'' This draft guidance also addresses the need to provide consumers with access to professional assistance in interpreting/understanding test results and counseling referrals.

II. Significance of Guidance

This draft guidance document represents the agency's current thinking on labeling of over-the-counter sample collection systems for drugs of abuse testing. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance document is issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive the draft guidance entitled ''Guidance on Labeling for Over-the-Counter Sample Collection Systems for Drugs of Abuse Testing'' via your fax machine; call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (1154) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer. Updated on a regular basis, the CDRH home page includes the draft guidance entitled ''Guidance on Labeling for Over-the-Counter Sample Collection Systems for Drugs of Abuse Testing,'' device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. ''Guidance on Labeling for Over-the-Counter Sample Collection Systems for Drugs of Abuse Testing'' will be available at http://www.fda.gov/cdrh/ggpmain.html#docs.

IV. Paperwork Reduction Act of 1995

The information collection provisions referred to in this guidance have been approved under OMB control number 0910–0368. This approval expires April 30, 2001. 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.

V. Comments

Interested persons may, on or before March 22, 2000, submit to Dockets Management Branch (address above) written comments regarding this draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 10, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–33002 Filed 12–20–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Establishment

Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), the Director, National Institutes of Health (NIH), announces the establishment of the PubMed Central National Committee (Committee).

This Committee will advise the Director, NIH, the Director, National Library of Medicine, and the Director, National Center for Biotechnology Information, on the content and operation of the PubMed Central repository. The Committee will establish criteria to certify groups submitting materials to the system, monitoring the operation of the system, and ensuring that PubMed Central evolves and remains responsive to the needs of researchers, publishers, librarians and the general public.

Unless renewed by appropriate action prior to its expiration, the charter for the PubMed Central National Advisory Committee will expire two years from the date of establishment.

Dated: December 15, 1999.

Harold Varmus,

Director, National Institutes of Health.

[FR Doc. 99–32966 Filed 12–20–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel Biomedical Research Technology.

Date: January 5, 2000.

Time: 2:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: 6705 Rockledge Drive, suite 6018, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: D. G. Patel, PHD, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0824.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306, 93.333, Clinical Research, 93.333, 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: December 15, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33084 Filed 12–20–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel ''Development of Improved HIV Risk Behavior Questionnaire and Interview''

Date: January 5, 2000.

Time: 9:30 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel ''Prevention Training''.

Date: January 12, 2000.

Time: 9:30 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel ''INVEST''.

Date: January 19, 2000.

Time: 9:30 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel ''Measurement Modules for Prevention Interventions''.

Date: January 26, 2000.

Time: 9:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate contract proposals.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel ''Develop Prevention Research Dissemination''.

Date: January 26, 2000.

Time: 10:30 a.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Program review, national Institutes of Health, DHHS, 6001 Executive Boulevard, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: December 13, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–32968 Filed 12–20–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Review of P01—Teleconference.

Date: January 13, 2000.

Time: 11:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Gateway Building, 7201 Wisconsin Avenue, Suite 2c212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William A. Kachadorian, PhD, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 10, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–32969 Filed 12–20–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.

as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–6 J2.

Date: January 7, 2000.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37A, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 10, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–32970 Filed 12–20–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Trauma and Burn.

Date: January 13–15, 2000.

Time: 7:30 am to 11:00 am.

Agenda: To review and evaluate grant applications.

Place: Juliana Hotel, 590 Bush Street, San Francisco, CA 94108.

Contact Person: Carole H. Latker, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Bulding, Room 1AS–13, Bethesda, MD 20892, (301) 594–2848.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93,821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: December 15, 1999.

LaVerne Y. Stringfield.

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33082 Filed 12–20–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group Biomedical Research and Research Training Review Subcommittee A.

Date: March 15, 2000.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Carole H. Latker, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13, Bethesda, MD 20892, (301) 594–3663.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: December 15, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33083 Filed 12–20–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental Research Special Emphasis Panel Dental, Oral and Craniofacial Data Resource Center.

Date: January 13, 2000.

Time: 9 am to 1 pm.

Agenda: To review and evaluate contract proposals.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Louise P. Corman, Phd., Scientific Review Administrator, Review Branch, NIH, NHLBI, Rockledge Building II, 6701 Rockledge Drive, Suite 7180, Bethesda, MD 20892–7924, (301) 435–0270.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 15, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33085 Filed 12–20–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel NHAAP Phase II Contract Review.

Date: January 27, 2000.

Time: 10:30 am to 5:00 pm.

Agenda: To review and evaluate contract proposals.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892.

Contact Person: Peter Clepper, Program Officer, National Library of Medicine, Extramural Programs, Rockledge One, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: December 15, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33081 Filed 12–20–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 15, 1999.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Edmund Copeland, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7804, Bethesda, MD 20892, (301) 435–1715.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 20, 1999.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 21, 1999.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 21, 1999.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John L. Bowers, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1725.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 21, 1999.

Time: 12:00 p.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Edmund Copeland, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7804, Bethesda, MD 20892, (301) 435–1715.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 9, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–32967 Filed 12–20–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: January 4, 2000.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Marcelina B. Powers, DVM, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7804, Bethesda, MD 20892, (301) 435–1720.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: January 6, 2000.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Leonard Jakubczak, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, (301) 435–1247

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: January 7, 2000.
Time: 2:45 PM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Carl D. Banner, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1251, bannerc@drg.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 14, 1999.

LaVerne, Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–32963 Filed 12–20–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6). Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 15, 1999.
Time: 12:00 p.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Mary Custer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7850, Bethesda, MD 20892, (301) 435–1164.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 14, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–32964 Filed 12–20–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 20, 1999.
Time: 1:00 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jean Hickman, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892 (301) 435–1146.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 21, 1999.
Time: 1:00 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Martin Slater, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7808, Bethesda, MD 20892, (301) 435–1149.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 14, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–32965 Filed 12–20–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 16, 1999.

Time: 1:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Clare Walker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, (301) 435–1165.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 PBC 1.

Date: December 17, 1999.

Time: 10:00 am to 11:00 am.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Zakir Bengali, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892, (301) 435–1742.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 15, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33086 Filed 12–20–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–ET; MTM 41226]

Public Land Order No. 7421; Partial Revocation of Secretarial Order Dated November 24, 1933; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial order insofar as it affects 40 acres of public land withdrawn for the Bureau of Land Management's Public Water Reserve No. 107, Interpretation No. 192. The land does not qualify for a public water reserve and the revocation is needed to permit disposal of the land through exchange. With this revocation, there is no remaining land withdrawn under this Secretarial order in the state of Montana. The land has been open to metalliferous mining and mineral leasing under the terms of the withdrawal, but is temporarily closed to surface entry and all mining due to a pending legislated land exchange.

EFFECTIVE DATE: December 21, 1999.

FOR FURTHER INFORMATION CONTACT: Russ Sorensen, Dillon Field Office, 1005 Selway Drive, Dillon, Montana 59725–9431, 406–683–2337 or Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–896–5052.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Order dated November 24, 1933, which withdrew public land for the Bureau of Land Management's Public Water Reserve No. 107, Interpretation No. 192, is hereby revoked insofar as it affects the following described land:

Principal Meridian, Montana

T. 13 S., R. 1 E.,
Sec. 18, NE¼SE¼.

The area described contains 40 acres in Beaverhead County.

2. The above-described land is hereby made available for exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716 (1994).

Dated: December 1, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–32973 Filed 12–20–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZA 78501]

Public Land Order No. 7422; Withdrawal of National Forest System Lands for the Diamond Fork System, Bonneville Unit of the Central Utah Project; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws approximately 2,795 acres of National Forest System lands from location and entry under the United States mining laws, for a 20-year period, for the Department of the Interior, Central Utah Project Completion Act Office to protect the Diamond Fork System, Bonneville Unit of the Central Utah Project. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: December 21, 1999.

FOR FURTHER INFORMATION CONTACT: Cliff Yardley, BLM Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, 602–417–9437.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, to protect the Diamond Fork System, Bonneville Unit of the Central Utah Project:

Salt Lake Meridian

Uinta National Forest

T. 8 S., R. 5 E.,
Sec. 1;
Sec. 2, lots 1, 2, 7, and 8;
Sec. 12, E½SE¼;
Sec. 14, S½SE¼;
Sec. 20, E½NE¼SE¼ and SE¼SE¼;
Sec. 21, S½NE¼, E½SW¼NW¼, SE¼NW¼, SW¼, N½SE¼, and SW¼SE¼;
Sec. 22, NE¼, NE¼NW¼, S½NW¼, N½SW¼, and N½SE¼;
Sec. 28, NW¼NW¼;
Sec. 29, NE¼, SE¼NW¼, and S½;
Sec. 33, SW¼NW¼.

The areas described aggregate approximately 2,795 acres in Utah County.

2. The withdrawal made by this order does not alter the applicability of those land laws governing the use of the National Forest System lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: December 1, 1999.

John Berry,

Assistant Secretary of the Interior,

[FR Doc. 99–32972 Filed 12–20–99; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

National Park Service

Simplified Standard Concession Contracts

ACTION: Proposed National Park Service simplified standard concession contracts.

SUMMARY: The National Park Service (NPS) authorizes certain business entities to operate concessions in areas of the national park system. The agreements embodying these authorizations consist primarily of standard language that incorporate NPS terms and conditions established by law and prudent contract administration. In 1998, Public Law 105–391 was enacted which in many significant ways affects the content of concession contracts to be entered into after its effective date. On September 3, 1999, NPS published a proposed new standard concession contract (Category I contract) reflecting the requirements of the new law, as well as a variety of improvements NPS wishes to make to its standard concession contract, including a new organizational structure for the sake of clarity.

Under this notice, NPS proposes two simplified versions of its proposed standard concession contract (Category II and Category III contracts) that will be used for smaller concession operations.

NPS proposes the following distinctions between the three contract categories:

Category I contracts will be used in situations where the concessioner will be required or allowed to construct or install capital improvements on park area lands, thereby acquiring a compensable interest in real property on park area lands. Category I contracts will also require that the concessioner perform capital maintenance on assigned concession facilities, as necessary, and will require the establishment of a maintenance reserve for this purpose.

Category II contracts will be used in situations where a concessioner will operate on assigned land or in an assigned concession facility, but will not allow the concessioner to construct or install capital improvements or perform capital maintenance and, therefore, do not involve the concessioner's obtaining a compensable interest in real property located on park area lands. As an example, a Category II contract might be used to authorize a gift shop operation in a portion of a park visitor center, or a snack bar operation in an assigned building.

Category III contracts will be used in situations where no lands or buildings are assigned to the concessioner; consequently, the concessioner will not be allowed to construct or install any capital improvements or perform capital maintenance and the concessioner will not obtain any compensable interest in real property located on park area lands. Many outfitter/guide operations will be authorized by Category III contracts.

NPS, although not required to do so by law, seeks public comments on the proposed simplified standard concession contracts (Category II and Category III contracts) to assist it in the development of final versions as a matter of public policy.

DATES: NPS will accept written comments on the proposed simplified concession contracts on or before January 20, 2000.

ADDRESSES: Comments should be addressed to: Concession Program Manager, National Park Service, 1849 ''C'' Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Wendelin Mann, Concession Program, National Park Service, 1849 ''C'' Street, NW, Washington, D.C. 20240 (202/565–1219).

SUPPLEMENTARY INFORMATION: Public Law 105–391, enacted on November 13, 1998, among other matters, amended the statutory policies and procedures under which NPS operated its concession program. The new law requires adoption of new regulations governing the award, content and management of concession contracts. On June 30, 1999, NPS published for public comment proposed regulations implementing the new law. On September 3, 1999, NPS published for public comment a proposed new standard concession contract. As indicated in the September 3, 1999, public notice, after adoption of the new regulations and the new standard contract, NPS intended to develop and adopt a simplified (''short-form'') concession contract that will be used for smaller concession operations that do not involve the concessioner's obtaining a compensable interest in real property located on park area lands. However, based on its initial review of comments in response to the proposed regulations and standard concession contract, NPS has determined that it would be appropriate to develop two simplified contract categories and publish both simplified concession contracts for public comment prior to the adoption of final regulations and the new standard concession contract. Any changes that may be made to the standard concession contract as a result of public comment will be incorporated, to the extent applicable, in the simplified concession contracts. NPS plans to adopt the new regulations, the new standard concession contract and the simplified concession contracts contemporaneously after due consideration of all public comments received on these documents.

Category II Contract

United States Department of the Interior

National Park Service

_____

[Name of Area]

_____

[Site]

_____

[Type of Service]

Concession Contract No. _____

_____

[Name of Concessioner]

_____

[Address, including email address and phone number]

Doing Business As _____

Covering the Period _____ through _____

Category II—Concession Contract

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[Corporation]

This CONTRACT is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the _____ Region, hereinafter referred to as the ''Director,'' and, a corporation organized and existing under the laws of the State of _____ doing business as *hereinafter* referred to as the ''Concessioner'':

[Partnership]

This CONTRACT is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the _____ Region, hereinafter referred to as the ''Director'', and *of* _____, _____, and _____ of, partners, doing business as, pursuant to a partnership agreement dated _____, with the principal place of business at _____, hereinafter referred to as the ''Concessioner'':

[Sole Proprietorship]

This Contract made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the _____ Region, hereinafter referred to as the ''Director,'' and, an individual of, doing business as _____, hereinafter referred to as the ''Concessioner'':

Witnesseth

That whereas, [Name of Park, Recreation Area, etc.] is administered by the Director as a unit of the national park system to conserve the scenery and the natural and historic objects and the wild life therein, and to provide for the public enjoyment of the same in such manner as will leave such Area unimpaired for the enjoyment of future generations; and

Whereas, to accomplish these purposes, the Director has determined that certain visitor services are necessary and appropriate for the public use and enjoyment of the Area and should be provided for the public visiting the Area; and

Whereas, the Director desires the Concessioner to establish and operate these visitor services at reasonable rates under the supervision and regulation of the Director;

Now, therefore, pursuant to the authority contained in the Acts of August 25, 1916 (16 U.S.C. 1, 2–4), and November 13, 1998 (P.L. 105–391), and other laws that supplement and amend the Acts, the Director and the Concessioner agree as follows:

Sec. 1. Term of Contract

This Concession Contract No. _____ (''CONTRACT'') shall be effective as of _____, and shall be for the term of _____ (____) years from _____, 20____.

Sec. 2. Definitions

The following terms used in this CONTRACT will have the following meanings, which apply to both the singular and the plural forms of the defined terms:

(a) ''Applicable Laws'' means the laws of Congress governing the Area, including, but not limited to, the rules, regulations, requirements and policies promulgated under those laws, whether now in force, or amended, enacted or promulgated in the future, including, without limitation, federal, state and local laws, rules, regulations, requirements and policies governing nondiscrimination, protection of the environment and/or protection of public health and safety.

(b) ''Area'' means the property within the boundaries of [Name of Park Unit].

(c) ''Capital Improvement'' shall have the meaning set forth in 36 CFR Part 51 as of the effective date of this CONTRACT.

(d) ''Concession Facilities'' shall mean all Area lands assigned to the Concessioner under this CONTRACT, all real property improvements assigned to the Concessioner under this Contract, including without limitation all government personal property assigned to the Concessioner under this CONTRACT. The United States retains title and ownership to all Concession Facilities.

(e) ''Director'' means the Director of the National Park Service and his duly authorized representatives unless otherwise indicated.

(f) ''Exhibit'' or ''Exhibits'' shall mean the various exhibits, which are attached to this CONTRACT, each, of which is hereby made a part of this CONTRACT.

(g) ''Gross Receipts'' means the total amount received or realized by, or accruing to, the Concessioner from all sales for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the rights granted by this CONTRACT, including gross receipts of subconcessioners as herein defined, commissions earned on contracts or agreements with other persons or companies operating in the Area, and gross receipts earned from electronic media sales, but excluding:

(i) Intracompany earnings on account of charges to other departments of the operation (such as laundry);

(ii) Charges for employees' meals, lodgings, and transportation;

(iii) Cash discounts on purchases;

(iv) Cash discounts on sales;

(v) Returned sales and allowances;

(vi) Interest on money loaned or in bank accounts;

(vii) Income from investments;

(viii) Income from subsidiary companies outside of the Area;

(ix) Sale of property other than that purchased in the regular course of business for the purpose of resale;

(x) Sales and excise taxes that are added as separate charges to approved sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid government agencies;

(xi) Receipts from the sale of handcrafts that have been approved for sale by the Director as constituting authentic American Indian, Alaskan Native, Native Samoan, or Native Hawaiian handicrafts.

All monies paid into coin operated devices, except telephones, whether

provided by; the Concessioner or by others, shall be included in gross receipts. However, only revenues actually received by the Concessioner from coin-operated telephones shall be included in gross receipts. All revenues received from charges for in-room telephone or computer access shall be included in gross receipts.

(h) ''Gross receipts of subconcessioners'' means the total amount received or realized by, or accruing to, subconcessioners from all sources, as a result of the exercise of the rights conferred by subconcession contracts hereunder without allowances, exclusions or deductions of any kind or nature whatsoever.

(i) ''Leasehold Surrender Interest'' shall have the meaning set forth in 36 CFR Part 51 as of the effective date of this CONTRACT.

(j) ''Real Property Improvements'' means real property other than land, including, but not limited to, capital improvements.

(k) ''Superintendent'' means the manager of the Area.

(l) ''Visitor services'' means the accommodations, facilities and services that the Concessioner is required and authorized to provide by section 3(a) of this CONTRACT.

Sec. 3. Services and Operations

(a) Required and Authorized Visitor Services

During the term of this CONTRACT, the Director requires and authorizes the Concessioner to provide the following visitor services for the public within the Area:

(1) *Required Visitor Services.* The Concessioner is required to provide the following visitor services during the term of this CONTRACT:

[Provide detailed description of required services. Broad generalizations such as ''any and all facilities and services customary in such operations'' or ''such additional facilities and services as may be required'' are not to be used. A provision stating ''The Concessioner may provide services incidental to the operations authorized hereunder at the request and written approval of the Director'' is acceptable.]

(2) *Authorized Visitor Services.* The Concessioner is authorized but not required to provide the following visitor services during the term of this CONTRACT:

[Provide detailed description of authorized services.]

(b) Operation and Quality of Operation

The Concessioner shall provide, operate and maintain the required and authorized visitor services and any related support facilities and services in accordance with this CONTRACT to such an extent and in a manner considered satisfactory by the Director. The Concessioner shall provide the plant, personnel, equipment, goods, and commodities necessary for providing, operating and maintaining the required and authorized visitor services in accordance with this CONTRACT. The Concessioner's authority to provide visitor services under the terms of this CONTRACT is non-exclusive.

(c) Operating Plan [OPTIONAL—This section may be deleted and operating requirements incorporated under Section 18, Special Provisions.]

The Director, acting through the Superintendent, shall establish and revise, as necessary, specific requirements for the operations of the Concessioner under this CONTRACT in the form of an Operating Plan (including, without limitation, a risk management program, that must be adhered to by the Concessioner). The initial Operating Plan is attached to this CONTRACT as Exhibit ''G.'' The Director in his discretion, after consultation with the Concessioner, may make modifications to the initial Operating Plan provided that these modifications shall not be inconsistent with the terms and conditions of the main body of this CONTRACT.

(d) Merchandise and Services

(1) The Director reserves the right to determine and control the nature, type and quality of the visitor services described in this CONTRACT, including, but not limited to, the nature, type, and quality of merchandise, if any, to be sold or provided by the Concessioner within the Area.

(2) All material, regardless of media format (*i.e.* printed, electronic, broadcast media), provided to the public by the Concessioner, including promotional material, must be approved in writing by the Director prior to use. All such material will identify the Concessioner as an authorized Concessioner of the National Park Service, Department of the Interior.

(3) [OPTIONAL—To be used only if the concessioner is authorized to sell merchandise.] The Concessioner, where applicable, will develop and implement a plan satisfactory to the Director that will assure that all gift merchandise, if any, to be sold or provided reflects the purpose and significance of the Area, including, but not limited to, merchandise that reflects the conservation of the Area's resources or the Area's geology, wildlife, plant life, archeology, local Native American culture, local ethnic culture, and historic significance.

(e) Rates

All rates and charges to the public by the Concessioner for visitor services shall be reasonable and appropriate for the type and quality of facilities and/or services required and/or authorized under this CONTRACT. The Concessioner's rates and charges to the public must be approved by the Director in accordance with rate approval procedures and guidelines promulgated by the Director from time to time.

(f) Impartiality as to Rates and Services

(1) In providing visitor services, the Concessioner must require its employees to observe a strict impartiality as to rates and services in all circumstances. The Concessioner shall comply with all Applicable Laws relating to nondiscrimination in providing visitor services to the public including, without limitation, those set forth in Exhibit ''A.''

(2) The Concessioner may grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted under this CONTRACT. However, the Director reserves the right to review and modify Concessioner's complimentary or reduced rate policies and practices.

(3) The Concessioner will provide Federal employees conducting official business reduced rates for lodging, essential transportation and other specified services necessary for conducting official business in accordance with guidelines established by the Director. Complimentary or reduced rates and charges shall otherwise not be provided to Federal employees by the Concessioner except to the extent that they are equally available to the general public.

Sec. 4. Concessioner Personnel

(a) The Concessioner shall provide all personnel necessary to provide the visitor services required and authorized by this CONTRACT.

(b) The Concessioner shall comply with all Applicable Laws relating to employment and employment conditions, including, without limitation, those identified in Exhibit ''A.''

(c) The Concessioner shall ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the public. The Concessioner shall have its employees who come in direct contact with the public, so far as practicable, wear a uniform or badge by which they may be

identified as the employees of the Concessioner.

(d) The Concessioner shall establish pre-employment screening, hiring, training, employment, termination and other policies and procedures for the purpose of providing visitor services through its employees in an efficient and effective manner and for the purpose of maintaining a healthful, law abiding, and safe working environment for its employees. The Concessioner shall conduct appropriate background reviews of applicants for employment to assure that they conform to the hiring policies established by the Concessioner.

(e) The Concessioner shall hire, to the greatest extent possible, people who are both interested in serving the public in a national park environment and interested in being positive contributors to the park's purpose.

(f) The Concessioner shall ensure that its employees are provided the training needed to provide quality visitor services and to maintain up-to-date job skills.

(g) The Concessioner shall review the conduct of any of its employees whose action or activities are considered by the Concessioner or the Director to be inconsistent with the proper administration of the Area and enjoyment and protection of visitors and shall take such actions as are necessary to fully correct the situation.

(h) The Concessioner shall maintain, to the greatest extent possible, a drug free environment, both in the workplace and in any employee housing within the Area.

(i) The Concessioner shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and in the Area, and specifying the actions that will be taken against employees for violating this prohibition. In addition, the Concessioner shall establish a drug-free awareness program to inform employees about the danger of drug abuse in the workplace and the Area, the availability of drug counseling, rehabilitation and employee assistance programs, and the Concessioner's policy of maintaining a drug-free environment both in the workplace and in the Area.

(j) The Concessioner shall take appropriate personnel action, up to and including termination or requiring satisfactory participation in a drug abuse or rehabilitation program which is approved by a Federal, State, or local health, law enforcement or other appropriate agency, for any employee that violates the prohibition on the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

Sec. 5. Legal, Regulatory, Policy Compliance

(a) Legal, Regulatory and Policy Compliance

This CONTRACT, operations thereunder by the Concessioner and the administration of it by the Director shall be subject to all Applicable Laws. The Concessioner must comply with all Applicable Laws in fulfilling its obligations under this CONTRACT at the Concessioner's sole cost and expense. Certain Applicable Laws governing protection of the environment are further described in this Contract. Certain Applicable Laws relating to nondiscrimination in employment and providing accessible facilities and services to the public are further described in this CONTRACT.

(b) Notice

The Concessioner shall give the Director immediate written notice of any violation of Applicable Laws and, at its sole cost and expense, must promptly rectify any such violation.

(c) How and Where To Send Notice

All notices required by this CONTRACT, shall be in writing and shall be served on the parties at the following addresses. The mailing of a notice by registered or certified mail, return receipt requested, shall be sufficient service. Notices sent to the Director shall be sent to the following address:

Superintendent
Park name
Address
Attention:

Notices sent to the Concessioner shall be sent to the following address:

Concessioner
Address
Attention:

Sec. 6. Environmental and Cultural Protection

(a) Environmental Protection

(1) In addition to complying with all Applicable Laws pertaining to the protection of natural resources within the area, the Concessioner will conduct its operation, construction, maintenance, acquisition, and provision of visitor services in a manner that prevents or reduces environmental degradation and that promotes the use of environmentally beneficial products. The Concessioner will develop, pursuant to guidelines provided by the Director, and carry out, to the satisfaction of the Director, a documented environmental monitoring program or programs to ensure that park resources affected by concessioner activities under this CONTRACT are not unduly impaired. The Concessioner shall be financially responsible for environmental audits that may be required by the Director for each three-year period of this CONTRACT.

(2) The Concessioner shall obtain the Director's approval prior to using any chemicals, pesticides, any hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

(3) The Concessioner shall monitor, test, maintain, repair, upgrade, replace, remove, or mitigate, in accordance with Applicable Laws and in accordance with the requirements of the Director:

(i) Any discharge, release or threatened release (whether solid, liquid or gaseous in nature) of any hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product on or to the Area, including soil, surface water or groundwater;

(ii) Any materials, equipment, and facilities associated with such discharge, release or threatened release; or

(iii) any materials, equipment and facilities used in the handling, storage, disposal, transport or other use of any such hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

(4) The Concessioner shall timely contact, notify and/or otherwise confer with appropriate federal, state and/or local agencies with respect to any reporting obligation arising out of Concessioner's operations under this CONTRACT and the Concessioner shall simultaneously provide notice of such contact to the Director and allow the Director the opportunity to participate in any such proceedings.

(5) The Concessioner shall give the Director immediate notice of any discharge, release or threatened release (whether solid, liquid or gaseous in nature) of any hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

(6) The Concessioner shall give the Director immediate written notice of any threatened or actual notice of violation of any federal, state or local law, rule, regulation, requirement or policy relating to or governing the use, handling, storage, disposal, transport, presence, acceptable concentration, or remediation of any hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product received by Concessioner.

(7) The Concessioner, at its sole cost and expense, shall promptly rectify any discharge or release as set forth in this section or any threatened or actual violation as set forth in this section, including, but not limited to, payment of any fines or penalties imposed thereon.

(8) The Concessioner shall indemnify the United States in accordance with section 12 of the Contract from losses, damages or judgements (including, without limitation, fines and penalties) and expenses (including, without limitation, attorneys fees and experts fees) arising out of the activities of the Concessioner pursuant to this section. Such indemnification shall survive termination of this CONTRACT.

(9) If the Concessioner does not promptly rectify the discharge or release (whether solid, liquid or gaseous in nature) of any hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product, the Director may, in its sole discretion and after notice to Concessioner, take any such action the Director deems necessary to minimize, remediate, or otherwise clean up such release or discharge, and recover any costs associated with such action from the Concessioner upon demand.

(10) Even if not specifically required by Applicable Laws, the Concessioner shall comply with directives of the Director to clean up or remove any materials, product or by-product used, handled, stored, disposed, transported onto or into the Area by the Concessioner to ensure that the Area remains in good condition.

(11) The Concessioner shall be responsible for managing weeds, harmful insects, rats, mice and other pests on all lands and improvements assigned to the Concessioner under this CONTRACT. All such weed and pest management activities shall be in accordance with guidelines established by the Director.

(b) Protection of Cultural and Archeological Resources

The Concessioner shall ensure that any protected sites and archeological resources within the Area are not disturbed or damaged by the Concessioner, including the Concessioner's employees, subcontractors or agents, except in accordance with Applicable Laws, and only with the prior approval of the Director. Discoveries of any archeological resources by Concessioner shall be promptly reported to the Director. The Concessioner shall cease work or other disturbance which may impact any protected site or archeological resource until the Director grants approval, upon such terms and conditions as the Director deems necessary, to continue such work or other disturbance.

Sec. 7. Interpretation of Area Resources

(a) Concessioner Obligations

(1) The Concessioner shall provide all visitor services in a manner that is consistent with and supportive of the interpretive themes, goals and objectives of the Area.

(2) The Concessioner may assist in Area interpretation at the request of the Director to enhance visitor enjoyment of the Area. Any additional visitor services that may result from this assistance must be recognized in writing through written amendment of Section 3 of this CONTRACT.

(b) Director Review of Content

The Concessioner must submit the proposed content of any interpretive programs, exhibits, materials or displays to the Director for review and approval prior to offering such programs, exhibits or displays to Area visitors.

(c) Provision of Interpretation Not Exclusive

Notwithstanding any provision of this CONTRACT to the contrary, the Director retains the right to provide Area interpretation, including without limitation, the conduct of interpretive programs and the sale of interpretive materials, directly or though cooperative or other agreements with third parties, as the Director determines to be necessary or appropriate.

Sec. 8. Concession Facilities Used in Operations by Concessioner

(a) Assignment of Concession Facilities

(1) The Director hereby assigns Concession Facilities as described in Exhibit B to the Concessioner for the purposes of this CONTRACT. The Concessioner shall not be authorized to construct any Capital Improvements upon Area lands. The Concessioner shall not obtain a Leasehold Surrender Interest or other compensable interest in Capital Improvements constructed or installed in violation of this CONTRACT.

(2) The Director shall from time to time amend Exhibit B to reflect changes in Concession Facilities assigned to Concessioner.

(b) Concession Facilities Withdrawals

The Director may withdraw all or portions of these Concession Facilities assignments at any time during the term of this CONTRACT if:

(1) The withdrawal is for the purpose of enhancing or protecting Area resources or visitor enjoyment or safety;

(2) The operations utilizing the assigned Concession Facilities have been terminated or suspended by the Director; or

(3) Land assigned to the Concessioner is no longer necessary for the concession operation.

(c) Effect of Withdrawal

Any permanent withdrawal of assigned Concession Facilities which the Director considers as essential for the Concessioner to provide the visitor services required by this CONTRACT will be treated by the Director as a termination of this Contract pursuant to Section 16. No compensation is due the Concessioner in these circumstances.

(d) Right of Entry

The Director shall have the right at any time to enter upon or into the Concession Facilities assigned to the Concessioner under this CONTRACT for any purpose he may deem necessary for the administration of the Area.

(e) Personal Property

(1) *Personal Property Provided by the Concessioner.* The Concessioner shall provide all personal property, including removable equipment, furniture and goods, necessary for its operations under this CONTRACT.

(2) *Personal Property Provided by the Government.* The Director may provide certain items of government personal property and equipment for the Concessioner's use in the performance of this CONTRACT. The Director hereby assigns government personal property and equipment listed in Exhibit C to the Concessioner as of the effective date of this CONTRACT. This Exhibit C will be modified from time to time by the Director as items may be withdrawn or additional items added. The Concessioner shall be accountable to the Director for the government personal property and equipment assigned to it

and shall be responsible for maintaining the property and equipment as necessary to keep it in good and operable condition. If the property ceases to be serviceable, it shall be returned to the Director for disposition.

(f) Condition of Concession Facilities

Concessioner has inspected the Concession Facilities, including any government personal property, is thoroughly acquainted with their condition, and accepts the Concession Facilities ''as is.''

(g) Utilities

(1) The Director may provide utilities to the Concessioner for use in connection with the operations required and/or authorized under this CONTRACT when available at rates to be fixed by the Director under applicable guidelines.

(2) If the Director does not provide these utilities, the Concessioner shall, with the written approval of the Director and under any requirements that the Director shall prescribe, secure necessary utilities at its own expense from sources outside the Area.

Sec. 9. Maintenance

(a) Maintenance Obligation

The Concessioner shall be solely responsible for maintenance, repairs, housekeeping, and groundskeeping for all Concession Facilities to the satisfaction of the Director.

(b) Maintenance Plan [OPTIONAL—This section may be deleted and maintenance requirements incorporated under Section 18, Special Provisions.]

For these purposes, the Director, acting through the Superintendent, shall undertake appropriate inspections, and, after consultation with the Concessioner, shall establish and revise, as necessary, a Maintenance Plan consisting of specific maintenance requirements which shall be adhered to by the Concessioner. The initial Maintenance Plan is set forth in Exhibit F. The Director in his discretion may modify the Maintenance Plan from time to time after consultation with the Concessioner. Such modifications shall not be inconsistent with the terms and conditions of the main body of this CONTRACT.

Sec. 10. Fees

(a) Franchise Fee

(1) For the term of this CONTRACT, the Concessioner shall pay to the Director for the privileges granted under this CONTRACT a franchise fee equal to _____ Percent (_____ %) of the Concessioner's Gross Receipts for the preceding year or portion of a year.

(2) The Concessioner agrees that this franchise fee is consistent with the probable value of the privileges granted by this CONTRACT as defined in this section.

(3) The Concessioner shall have no right to an adjustment of the fees except as provided below. The Concessioner shall have no right to waiver of the franchise fee.

(b) Payments Due

(1) The franchise fee shall be due on a monthly basis at the end of each month and shall be paid by the Concessioner in such a manner that the Director shall receive payment within fifteen (15) days after the last day of each month that the Concessioner operates. This monthly payment shall include the franchise fee equal to the specified percentage of gross receipts for the preceding month.

(2) The Concessioner shall pay any additional fee amounts due at the end of the operating year as a result of adjustments at the time of submission of the Concessioner's Annual Financial Report. Overpayments shall be offset against the following year's fees.

(3) All franchise fee payments consisting of $10,000 or more, shall be deposited electronically by the Concessioner using the Treasury Financial Communications System.

(c) Interest

An interest charge will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, that payment is delayed beyond the fifteen (15)-day period provided for above. The percent of interest charged will be based on the current value of funds to the United States Treasury as published quarterly in the Treasury Fiscal Requirements Manual. The Director may also impose penalties for late payment to the extent authorized by Applicable Law.

Sec. 11. Indemnification and Insurance

(a) Indemnification

The Concessioner agrees to assume liability for and does hereby agree to save, hold harmless, protect, defend and indemnify the United States of America, its agents and employees from and against any and all liabilities, obligations, losses, damages or judgments (including without limitation penalties and fines), claims, actions, suits, costs and expenses (including without limitation attorneys fees and experts fees) of any kind and nature whatsoever on account of fire or other peril, bodily injury, death or property damage, or claims for bodily injury, death or property damage of any nature whatsoever, and by whomsoever made, in any way relating to or arising out of the activities of the Concessioner, his employees, subcontractors or agents under this CONTRACT. This indemnification shall survive the termination or expiration of this Contract.

(b) Insurance in General

(1) The Concessioner shall obtain and maintain during the entire term of this CONTRACT at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of this CONTRACT. The Director shall approve the types and amounts of insurance coverage purchased by the Concessioner.

(2) The Director will not be responsible for any omissions or inadequacies of insurance coverages and amounts in the event the insurance purchased by the Concessioner proves to be inadequate or otherwise insufficient for any reason whatsoever.

(3) At the request of the Director, the Concessioner shall at the time insurance is first purchased and annually, thereafter, provide the Director with a Certificate of Insurance that accurately details the conditions of the policy as evidence of compliance with this section. The Concessioner shall provide the Director thirty (30) days advance written notice of any material change in the Concessioner's insurance program hereunder.

(c) Commercial Public Liability

(1) The Concessioner shall provide commercial general liability insurance against claims arising out of or resulting from the acts or omissions of the Concessioner or its employees in carrying out the activities and operations required and/or authorized under this CONTRACT.

(2) This insurance shall be in the amount commensurate with the degree of risk and the scope and size of the activities required and/or authorized under this CONTRACT, as more specifically set forth in Exhibit E. Furthermore, the commercial general liability package shall provide the coverages and limits described in Exhibit E.

(3) All liability policies shall specify that the insurance company shall have no right of subrogation against the United States of America and shall provide that the United States of America is named an additional insured.

(4) From time to time, as conditions in the insurance industry warrant, the Director may, in his discretion, modify Exhibit E to revise the minimum required limits or to require additional types of insurance.

(d) Property Insurance

(1) In the event of damage or destruction, the Concessioner will repair or replace those Concession Facilities and other buildings, structures, equipment, furnishings, betterments, improvements and merchandise utilized by the Concessioner in the performance of the Concessioner's obligations under this CONTRACT.

(2) For this purpose, the Concessioner shall provide fire and extended insurance coverage on Concession Facilities in amounts that the Director may require during the term of the Contract. The values currently in effect are set forth in Exhibit E. This Exhibit will be revised at least every three (3) years, or earlier if there is a substantial change in value of Concession Facilities.

(3) Commercial property insurance shall provide for the Concessioner and the United States of America to be named insured as their interests may appear.

(4) In the event of loss, the Concessioner shall use all proceeds of such insurance to repair, rebuild, restore or replace Concession Facilities, equipment, furnishings and other personal property hereunder, as directed by the Director. Policies may not contain provisions limiting insurance proceeds to in situ replacement. The lien provision of Section 13 shall apply to such insurance proceeds.

(5) Insurance policies that cover Concession Facilities shall contain a loss payable clause approved by the Director which requires insurance proceeds to be paid directly to the Concessioner without requiring endorsement by the United States. The use of insurance proceeds for repair or replacement of Concession Facilities will not alter their character as properties of the United States and, notwithstanding any provision of this CONTRACT to the contrary, the Concessioner shall gain no ownership, Leasehold Surrender Interest or other compensable interest as a result of the use of these insurance proceeds.

(6) The commercial property package shall include the coverages and amounts described in Exhibit E.

Sec. 12. Bonds and Liens

(a) Bonds

The Director may require the Concessioner to furnish appropriate forms of bonds acceptable to the Director conditioned upon faithful performance of its obligations under this CONTRACT,in such form and in such amount as the Director may deem adequate.

(b) Lien

As additional security for the faithful performance by the Concessioner of its obligations under this Contract, and the payment to the Government of all damages or claims that may result from the Concessioner's failure to observe any such obligations, the Government shall have at all times the first lien on all assets of the Concessioner within the Area, including, but not limited to, all personal property of the Concessioner used in performance of the CONTRACT hereunder.

Sec. 13. Accounting Records and Reports

(a) Accounting System

(1) The Concessioner shall maintain an accounting system under which its accounts can be readily identified with its system of accounts classification. Such accounting system shall be capable of providing the information required by this CONTRACT. The Concessioner's system of accounts classification shall be directly related to the Concessioner Annual Financial Report Form issued by the Director.

(2) If the Concessioner's annual gross receipts are $250,000 or more, the Concessioner must use the accrual accounting method.

(3) In computing net profits for any purposes of this CONTRACT, the Concessioner shall keep its account in such manner that there can be no diversion or concealment of profits or expenses in the operations authorized hereunder by means of arrangements for the procurement of equipment, merchandise, supplies or services from sources controlled by or under common ownership with the Concessioner or by any other device.

(b) Annual Financial Report

(1) The Concessioner shall submit annually as soon as possible but not later than ninety (90) days after the last day of its fiscal year a financial statement for the preceding fiscal year or portion of a year as prescribed by the Director (''Concessioner Annual Financial Report'').

(2) If the annual gross receipts of the Concessioner are in excess of $1,000,000, the financial statements shall be audited by an independent Certified Public Accountant in accordance with the Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(3) If annual gross receipts are between $250,000, and $1,000,000, the financial statements shall be reviewed by an independent Certified Public Accountant in accordance with the Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(4) If annual gross receipts are less than $250,000, the financial statements may be prepared without involvement by an independent Certified Public Accountant, unless otherwise directed by the Director.

(c) Other Financial Reports

(1) *Balance Sheet.* Within ninety (90) days of the execution of this CONTRACT or its effective date, whichever is later, the Concessioner shall submit to the Director a balance sheet as of the beginning date of the term of this CONTRACT. The balance sheet shall be audited or reviewed, as determined by the gross receipts, by an independent Certified Public Accountant.

Sec. 14. Other Reporting Requirements

The following describes certain other reports required under this CONTRACT:

(a) Insurance Certification

As specified in Section 12, at the time insurance is first purchased, and annually thereafter, the Concessioner shall provide the Director with a Certificate of Insurance for all insurance coverages related to its operations under this CONTRACT. The Concessioner shall give the Director thirty (30) days advance written notice of any material change in its insurance program.

(b) Environmental Reporting

The Concessioner shall submit a quarterly report on any matters related to the Concessioner's environmental compliance requirements under this CONTRACT.

(c) Miscellaneous Reports and Data

The Director from time to time may require the Concessioner to submit other reports and data regarding its performance under the CONTRACT or otherwise, including, but not limited to, operational information.

Sec. 15. Suspension and Termination

(a) Suspension

The Director may temporarily suspend operations under this CONTRACT in whole or in part when necessary for administrative purposes or to enhance or protect Area resources, visitor enjoyment or safety. No compensation of any nature shall be due the Concessioner in the event of a suspension of operations, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the suspension.

(b) Termination

(1) The Director may terminate this CONTRACT in whole or part at any time when necessary for the purpose of enhancing or protecting Area resources or visitor enjoyment or safety.

(2) The Director may terminate this CONTRACT in whole or part for default if the Director determines that the Concessioner has breached any requirement of this CONTRACT, including, but not limited to, the requirement to maintain and operate visitor services to the satisfaction of the Director, the requirement to provide only visitor services required or authorized by the Director, the requirement to pay the established franchise fee, and the requirement to comply with Applicable Laws.

(3) In the event of a breach of the CONTRACT, the Director will provide the Concessioner an opportunity to cure by providing written notice to the Concessioner of the breach. In the event of a monetary breach, the Director will give the Concessioner a fifteen (15) day period to cure the breach. If the breach is not cured within that period, then the Director may terminate the CONTRACT for default. In the event of a nonmonetary breach, if the Director considers that the nature of the breach so permits, the Director will give the Concessioner thirty (30) days to cure the breach or to provide a plan, to the satisfaction of the Director in his sole discretion, to cure the breach over a specified period of time. If the breach is not cured within this specified period of time, the Director may terminate the CONTRACT for default. Notwithstanding this provision, repeated breaches of the same nature shall be grounds for termination for default without a cure period. In the event of a breach of any nature, the Director may suspend the Concessioner's operations as appropriate in accordance with Section 16(a).

(4) The Director may terminate this CONTRACT upon the filing or the execution of a petition in bankruptcy by or against the Concessioner, a petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, an assignment by the Concessioner for the benefit of creditors, a petition or other proceeding against the Concessioner for the appointment of a trustee, receiver or liquidator, or the taking by any person or entity of the rights granted by this CONTRACT or any part thereof upon execution, attachment or other process of law or equity. The Director may terminate this CONTRACT if the Director determines that the Concessioner is unable to perform the terms of this CONTRACT due to bankruptcy or insolvency.

(5) Termination of this CONTRACT for any reason shall be by written notice to the Concessioner.

(c) Notice of Bankruptcy or Insolvency

The Concessioner must give the Director notice fifteen (15) days prior to filing any petition in bankruptcy, filing any petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, or making any assignment for the benefit of creditors. The Concessioner must also give the Director immediate notice of any petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this CONTRACT or any part thereof upon execution, attachment or other process of law or equity. For purposes of the bankruptcy statutes, this CONTRACT is not a lease, but is an executory contract exempt from inclusion in assets of Concessioner pursuant to 11 U.S.C. 1135.

(d) Requirements in the Event of Termination

(1) In the event of termination of this CONTRACT by the Director for any reason, no compensation of any nature shall be due the Concessioner including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the termination.

(2) Upon termination of this CONTRACT for any reason, and except as otherwise provided in this section, the Concessioner shall, at Concessioner's expense, promptly vacate the Area, remove all of Concessioner's personal property, repair any injury occasioned by installation of removal of such property, and ensure that Concession Facilities are in as good condition as they were at the beginning of the term of this CONTRACT, reasonable wear and tear excepted.

(e) Removal of Personal Property

Except as otherwise provided in this CONTRACT, upon expiration or termination of this CONTRACT for any reason, the Concessioner shall remove its personal property from the Area unless it is sold to the Director or a successor concessioner. No compensation is due the Concessioner from the Director or a successor concessioner for such personal property. The Director or a successor concessioner may purchase such personal property from the Concessioner subject to mutually agreed upon terms. Personal property not removed from the Area by the Concessioner as of the date of expiration or termination of this CONTRACT, unless the Director in writing extends such date of removal, shall be considered abandoned property subject to disposition by the Director, at full cost and expense of the Concessioner, in accordance with Applicable Laws.

Sec. 16. Assignment, Sale or Encumbrance of Interests

(a) This CONTRACT is subject to the requirements of 36 CFR Part 51 as it may be amended from time to time with respect to proposed conveyances and encumbrances as those terms are defined in 36 CFR Part 51, including, but not limited to, proposed management and subconcession agreements. Failure by the Concessioner to comply with 36 CFR Part 51 is a material breach of this CONTRACT for which the Director may terminate this CONTRACT for default. The Director shall not be obliged to recognize any right of any person or entity to an interest in this CONTRACT of any nature or operating rights under this CONTRACT, if obtained in violation of 36 CFR part 51.

(b) The Concessioner shall advise any person(s) or entity proposing to enter into a transaction which may be subject to 36 CFR part 51 of the requirements of that regulation.

Sec. 17. General Provisions

(a) The Director and Comptroller General of the United States, or any of their duly authorized representatives, shall have access to the records of the Concessioner as provided by 36 C.F.R. Part 51 as it may now exist or be amended from time to time.

(b) All information required to be submitted to the Director by the Concessioner pursuant to this CONTRACT is subject to public release

by the Director to the extent required or authorized by Applicable Laws.

(c) Subconcession or other third party agreements, including management agreements, for the provision of principal services required and/or authorized under this CONTRACT are not permitted. However, subconcession or other third party agreements may be allowed for incidental or specialized services which are incidental to the principal services required and/or authorized under this CONTRACT. Any proposal to provide incidental or specialized services through subconcession or other third party agreements must be submitted to the Director in writing, along with a copy of the proposed subconcession or third party agreement, and shall be effective only if approved in writing by the Director. If the Director approves a subconcession or other third party agreement, the Concessioner and the Director will amend the CONTRACT to reflect such approval. Agreements with others to provide vending or other coin-operated machines shall not be considered subconcession agreements.

(d) The Concessioner is not entitled to be awarded or to have negotiating rights to any Federal procurement or service contract by virtue of any provision of this CONTRACT.

(e) Any and all taxes or assessments of any nature that may be lawfully imposed by any State or its political subdivisions upon the property or business of the Concessioner shall be paid promptly by the Concessioner.

(f) No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this CONTRACT or to any benefit that may arise from this CONTRACT but this restriction shall not be construed to extend to this CONTRACT if made with a corporation or company for its general benefit.

(g) This CONTRACT is subject to the provisions of 43 CFR, Subtitle A, Subpart D, concerning nonprocurement debarment and suspension. The Director may recommend that the Concessioner be debarred or suspended in accordance with the requirements and procedures described in those regulations, as they are effective now or may be revised in the future.

(h) This CONTRACT contains the sole and entire agreement of the parties. No oral representations of any nature form the basis of or may amend this CONTRACT. This CONTRACT may be extended, renewed or amended only when agreed to in writing by the Director and the Concessioner.

(i) The Concessioner is not granted by this CONTRACT any rights to renewal of this CONTRACT or to award of a new contract of any nature.

(j) This CONTRACT does not grant rights or benefits of any nature to any third party.

(k) The invalidity of a specific provision of this CONTRACT shall not affect the validity of the remaining provisions of this CONTRACT.

Sec. 18. Special Provisions

[OPTIONAL—To be used when operating and maintenance requirements are incorporated in the body of the contract, rather than as separate operating and maintenance plans.]

In Witness Whereof, the duly authorized representatives of the parties have executed this Contract as of the _____ day of _____, _____.

Concessioner:

By _____

(Title, Company Name)

United States of America:

By _____

(Director, National Park Service)

[Corporations]

Attest:

By _____

Title _____

[Sole Proprietorship]

Witnesses:

Name _____

Address _____

Title _____

Name _____

Address _____

Title _____

[Partnership]

Witnesses as to Each:

Name _____

Address _____

(Name) _____

Address _____

[Concessioner]

Name _____

(Name) _____

Category III—Contract

United States Department of the Interior

National Park Service

_____

[Name of Area]

_____

[Site]

_____

[Type of Service]

Concession Contract No. _____

_____

[Name of Concessioner]

_____

[Address, including email address and phone number]

Doing Business As _____

Covering the Period_____ through _____ _____

Category III—Concession Contract

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[Corporation]

This CONTRACT is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of

the_____Region, hereinafter referred to as the ''Director,'' and, a corporation organized and existing under the laws of the State of_____doing business as *hereinafter* referred to as the ''Concessioner'':

[Partnership]

This CONTRACT is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the_____Region, hereinafter referred to as the ''Director'', and *of*_____,_____, and _____ of, partners, doing business as, pursuant to a partnership agreement dated_____, with the principal place of business at_____, hereinafter referred to as the ''Concessioner'':

[Sole Proprietorship]

This CONTRACT made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the_____Region, hereinafter referred to as the ''Director,'' and, an individual of, doing business as_____, hereinafter referred to as the ''Concessioner'':

Witnesseth

That whereas, [*Name of Park, Recreation Area, etc.*] is administered by the Director as a unit of the national park system to conserve the scenery and the natural and historic objects and the wild life therein, and to provide for the public enjoyment of the same in such manner as will leave such Area unimpaired for the enjoyment of future generations; and

Whereas, to accomplish these purposes, the Director has determined that certain visitor services are necessary and appropriate for the public use and enjoyment of the Area and should be provided for the public visiting the Area; and

Whereas, the Director desires the Concessioner to establish and operate these visitor services at reasonable rates under the supervision and regulation of the Director;

Now, therefore, pursuant to the authority contained in the Acts of August 25, 1916 (16 U.S.C. 1, 2–4), and November 13, 1998 (P.L. 105–391), and other laws that supplement and amend the Acts, the Director and the Concessioner agree as follows:

Sec. 1. Term of Contract

This Concession Contract No. _____(''CONTRACT'') shall be effective as of _____, and shall be for the term of (_____) years from_____, 20____.

Sec. 2. Definitions

The following terms used in this CONTRACT will have the following meanings, which apply to both the singular and the plural forms of the defined terms:

(a) ''Applicable Laws'' means the laws of Congress governing the Area, including, but not limited to, the rules, regulations, requirements and policies promulgated under those laws, whether now in force, or amended, enacted or promulgated in the future, including, without limitation, federal, state and local laws, rules, regulations, requirements and policies governing nondiscrimination, protection of the environment and/or protection of public health and safety.

(b) ''Area'' means the property within the boundaries of [*Name of Park Unit*].

(c) ''Capital Improvement'' shall have the meaning set forth in 36 CFR Part 51 as of the effective date of this Contract.

(e) ''Director'' means the Director of the National Park Service and his duly authorized representatives unless otherwise indicated.

(f) ''Exhibit'' or ''Exhibits'' shall mean the various exhibits, which are attached to this CONTRACT, each, of which is hereby made a part of this CONTRACT.

(g) ''Gross Receipts'' means the total amount received or realized by, or accruing to, the Concessioner from all sales for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the rights granted by this CONTRACT, including gross receipts of subconcessioners as herein defined, commissions earned on contracts or agreements with other persons or companies operating in the Area, and gross receipts earned from electronic media sales, but excluding:

(i) Intracompany earnings on account of charges to other departments of the operation (such as laundry);

(ii) Charges for employees' meals, lodgings, and transportation;

(iii) Cash discounts on purchases;

(iv) Cash discounts on sales;

(v) Returned sales and allowances;

(vi) Interest on money loaned or in bank accounts;

(vii) Income from investments;

(viii) Income from subsidiary companies outside of the Area;

(ix) Sale of property other than that purchased in the regular course of business for the purpose of resale;

(x) Sales and excise taxes that are added as separate charges to approved sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid government agencies

(xi) Receipts from the sale of handcrafts that have been approved for sale by the Director as constituting authentic American Indian, Alaskan Native, Native Samoan, or Native Hawaiian handicrafts.

All monies paid into coin operated devices, except telephones, whether provided by; the Concessioner or by others, shall be included in gross receipts. However, only revenues actually received by the Concessioner from coin-operated telephones shall be included in gross receipts. All revenues received from charges for in-room telephone or computer access shall be included in gross receipts.

(h) ''Gross receipts of subconcessioners'' means the total amount received or realized by, or accruing to, subconcessioners from all sources, as a result of the exercise of the rights conferred by subconcession contracts hereunder without allowances, exclusions or deductions of any kind or nature whatsoever.

(i) ''Leasehold Surrender Interest'' shall have the meaning set forth in 36 CFR Part 51 as of the effective date of this CONTRACT.

(j) ''Superintendent'' means the manager of the Area.

(k) ''Visitor services'' means the accommodations, facilities and services that the Concessioner is required and authorized to provide by section 3(a) of this CONTRACT.

Sec. 3. Services and Operations

(c) Required and Authorized Visitor Services

During the term of this CONTRACT, the Director requires and authorizes the Concessioner to provide the following visitor services for the public within the Area: [Provide detailed description of required and authorized services.]

The Concessioner shall not be authorized to construct any Capital Improvements upon Area lands. The Concessioner shall not obtain a Leasehold Surrender Interest or other compensable interest in Capital Improvements constructed or installed in violation of this CONTRACT.

(d) Operation, Maintenance and Quality of Operation

(1) The Concessioner shall provide, operate and maintain the required and authorized visitor services in

accordance with this CONTRACT to such an extent and in a manner considered satisfactory by the Director. The Concessioner's authority to provide visitor services under the terms of this CONTRACT is non-exclusive.

(2) The Concessioner shall provide and maintain all personal property necessary for its operations under this Contract.

(3) The Director may provide certain items of government personal property and equipment for the Concessioner's use in the performance of this CONTRACT. The Director hereby assigns government personal property and equipment listed in Exhibit C to the Concessioner as of the effective date of this CONTRACT. This Exhibit C will be modified from time to time by the Director as items may be withdrawn or additional items added. The Concessioner shall be accountable to the Director for the government personal property and equipment assigned to it and shall be responsible for maintaining the property and equipment as necessary to keep it in good and operable condition. If the property ceases to be serviceable, it shall be returned to the Director for disposition.

(c) Operating and Maintenance Plan [OPTIONAL—This section may be deleted and operating requirements incorporated under Section 18, Special Provisions.]

The Director, acting through the Superintendent, shall establish and revise, as necessary, specific requirements for the operations of the Concessioner under this CONTRACT in the form of an Operating and Maintenance Plan (including, without limitation, a risk management program, that must be adhered to by the Concessioner). The initial Operating and Maintenance Plan is attached to this CONTRACT as Exhibit ''G.'' The Director in his discretion, after consultation with the Concessioner, may make modifications to the initial Operating and Maintenance Plan provided that these modifications shall not be inconsistent with the terms and conditions of the main body of this CONTRACT.

(d) Merchandise and Services

(1) The Director reserves the right to determine and control the nature, type and quality of the visitor services described in this CONTRACT, including, but not limited to, the nature, type, and quality of merchandise, if any, to be sold or provided by the Concessioner within the Area. The Concessioner shall provide all visitor services in a manner that is consistent with and supportive of the interpretive themes, goals and objectives of the Area.

(2) All material, regardless of media format (*i.e.* printed, electronic, broadcast media), provided to the public by the Concessioner, including promotional or interpretive material, must be approved in writing by the Director prior to use. All such material will identify the Concessioner as an authorized Concessioner of the National Park Service, Department of the Interior.

(3) [OPTIONAL—To be used only if the concessioner is authorized to sell merchandise.] The Concessioner, where applicable, will develop and implement a plan satisfactory to the Director that will assure that all gift merchandise, if any, to be sold or provided reflects the purpose and significance of the Area, including, but not limited to, merchandise that reflects the conservation of the Area's resources or the Area's geology, wildlife, plant life, archeology, local Native American culture, local ethnic culture, and historic significance.

(e) Rates

All rates and charges to the public by the Concessioner for visitor services shall be reasonable and appropriate for the type and quality of facilities and/or services required and/or authorized under this CONTRACT. The Concessioner's rates and charges to the public must be approved by the Director in accordance with rate approval procedures and guidelines promulgated by the Director from time to time.

(f) Impartiality as to Rates and Services

(1) In providing visitor services, the Concessioner must require its employees to observe a strict impartiality as to rates and services in all circumstances. The Concessioner shall comply with all Applicable Laws relating to nondiscrimination in providing visitor services to the public including, without limitation, those set forth in Exhibit ''A.''

(2) The Concessioner may grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted under this Contract. However, the Director reserves the right to review and modify Concessioner's complimentary or reduced rate policies and practices.

(3) The Concessioner will provide Federal employees conducting official business reduced rates for lodging, essential transportation and other specified services necessary for conducting official business in accordance with guidelines established by the Director. Complimentary or reduced rates and charges shall otherwise not be provided to Federal employees by the Concessioner except to the extent that they are equally available to the general public.

Sec. 4. Concessioner Personnel

(a) The Concessioner shall provide all personnel necessary to provide the visitor services required and authorized by this CONTRACT.

(b) The Concessioner shall comply with all Applicable Laws relating to employment and employment conditions, including, without limitation, those identified in Exhibit ''A.''

(c) The Concessioner shall ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the public. The Concessioner shall have its employees who come in direct contact with the public, so far as practicable, wear a uniform or badge by which they may be identified as the employees of the Concessioner.

(d) The Concessioner shall establish pre-employment screening, hiring, training, employment, termination and other policies and procedures for the purpose of providing visitor services through its employees in an efficient and effective manner and for the purpose of maintaining a healthful, law abiding, and safe working environment for its employees. The Concessioner shall conduct appropriate background reviews of applicants for employment to assure that they conform to the hiring policies established by the Concessioner.

(e) The Concessioner shall hire, to the greatest extent possible, people who are both interested in serving the public in a national park environment and interested in being positive contributors to the park's purpose.

(f) The Concessioner shall ensure that its employees are provided the training needed to provide quality visitor services and to maintain up-to-date job skills.

(g) The Concessioner shall review the conduct of any of its employees whose action or activities are considered by the Concessioner or the Director to be inconsistent with the proper administration of the Area and enjoyment and protection of visitors and shall take such actions as are necessary to fully correct the situation.

(h) The Concessioner shall maintain, to the greatest extent possible, a drug free environment, both in the workplace and in any employee housing within the Area.

(i) The Concessioner shall publish a statement notifying employees that the unlawful manufacture, distribution,

dispensing, possession, or use of a controlled substance is prohibited in the workplace and in the Area, and specifying the actions that will be taken against employees for violating this prohibition. In addition, the Concessioner shall establish a drug-free awareness program to inform employees about the danger of drug abuse in the workplace and the Area, the availability of drug counseling, rehabilitation and employee assistance programs, and the Concessioner's policy of maintaining a drug-free environment both in the workplace and in the Area.

(j) The Concessioner shall take appropriate personnel action, up to and including termination or requiring satisfactory participation in a drug abuse or rehabilitation program which is approved by a Federal, State, or local health, law enforcement or other appropriate agency, for any employee that violates the prohibition on the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

Sec. 5. Legal, Regulatory, Policy Compliance

(c) Legal, Regulatory and Policy Compliance

This CONTRACT, operations thereunder by the Concessioner and the administration of it by the Director shall be subject to all Applicable Laws. The Concessioner must comply with all Applicable Laws in fulfilling its obligations under this CONTRACT at the Concessioner's sole cost and expense. Certain Applicable Laws governing protection of the environment are further described in this CONTRACT. Certain Applicable Laws relating to nondiscrimination in employment and providing accessible facilities and services to the public are further described in this CONTRACT.

(d) Notice

The Concessioner shall give the Director immediate written notice of any violation of Applicable Laws and, at its sole cost and expense, must promptly rectify any such violation.

(c) How and Where To Send Notice

All notices required by this CONTRACT, shall be in writing and shall be served on the parties at the following addresses. The mailing of a notice by registered or certified mail, return receipt requested, shall be sufficient service. Notices sent to the Director shall be sent to the following address:

Superintendent
Park name
Address
Attention:

Notices sent to the Concessioner shall be sent to the following address:

Concessioner
Address
Attention:

Sec. 6. Environmental and Cultural Protection

(a) Environmental Protection

(1) In addition to complying with all Applicable Laws pertaining to the protection of natural resources within the area, the Concessioner will conduct its operation, maintenance, acquisition, and provision of visitor services in a manner that prevents or reduces environmental degradation and that promotes the use of environmentally beneficial products. The Concessioner will develop, pursuant to guidelines provided by the Director, and carry out, to the satisfaction of the Director, a documented environmental monitoring program or programs to ensure that park resources affected by concessioner activities under this CONTRACT are not unduly impaired. The Concessioner shall be financially responsible for environmental audits that may be required by the Director for each three-year period of this CONTRACT.

(2) The Concessioner shall obtain the Director's approval prior to using any chemicals, pesticides, any hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

(3) The Concessioner shall monitor, test, maintain, repair, upgrade, replace, remove, or mitigate, in accordance with Applicable Laws and in accordance with the requirements of the Director:

(i) Any discharge, release or threatened release (whether solid, liquid or gaseous in nature) of any hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product on or to the Area, including soil, surface water or groundwater;

(ii) Any materials, equipment, and facilities associated with such discharge, release or threatened release; or

(iii) Any materials, equipment and facilities used in the handling, storage, disposal, transport or other use of any such hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

(4) The Concessioner shall timely contact, notify and/or otherwise confer with appropriate federal, state and/or local agencies with respect to any reporting obligation arising out of Concessioner's operations under this Contract and the Concessioner shall simultaneously provide notice of such contact to the Director and allow the Director the opportunity to participate in any such proceedings.

(5) The Concessioner shall give the Director immediate notice of any discharge, release or threatened release (whether solid, liquid or gaseous in nature) of any hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

(6) The Concessioner shall give the Director immediate written notice of any threatened or actual notice of violation of any federal, state or local law, rule, regulation, requirement or policy relating to or governing the use, handling, storage, disposal, transport, presence, acceptable concentration, or remediation of any hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product received by Concessioner.

(7) The Concessioner, at its sole cost and expense, shall promptly rectify any discharge or release as set forth in this section or any threatened or actual violation as set forth in this section, including, but not limited to, payment of any fines or penalties imposed thereon.

(8) The Concessioner shall indemnify the United States in accordance with section 12 of the CONTRACT from losses, damages or judgements (including, without limitation, fines and penalties) and expenses (including, without limitation, attorneys fees and experts fees) arising out of the activities of the Concessioner pursuant to this section. Such indemnification shall survive termination of this CONTRACT.

(9) If the Concessioner does not promptly rectify the discharge or release (whether solid, liquid or gaseous in nature) of any hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product, the Director may, in its sole discretion and after notice to Concessioner, take any such action the Director deems necessary to

minimize, remediate, or otherwise clean up such release or discharge, and recover any costs associated with such action from the Concessioner upon demand.

(10) Even if not specifically required by Applicable Laws, the Concessioner shall comply with directives of the Director to clean up or remove any materials, product or by-product used, handled, stored, disposed, transported onto or into the Area by the Concessioner to ensure that the Area remains in good condition.

(11) The Concessioner shall be responsible for managing weeds, harmful insects, rats, mice and other pests on all lands and improvements assigned to the Concessioner under this Contract. All such weed and pest management activities shall be in accordance with guidelines established by the Director.

(b) Protection of Cultural and Archeological Resources

The Concessioner shall ensure that any protected sites and archeological resources within the Area are not disturbed or damaged by the Concessioner, including the Concessioner's employees, subcontractors or agents, except in accordance with Applicable Laws, and only with the prior approval of the Director. Discoveries of any archeological resources by Concessioner shall be promptly reported to the Director. The Concessioner shall cease work or other disturbance which may impact any protected site or archeological resource until the Director grants approval, upon such terms and conditions as the Director deems necessary, to continue such work or other disturbance.

Sec. 7. Fees

(a) Franchise Fee

(1) For the term of this CONTRACT, the Concessioner shall pay to the Director for the privileges granted under this CONTRACT a franchise fee equal to _____ percent (_____ %) of the Concessioner's Gross Receipts for the preceding year or portion of a year.

(2) The Concessioner agrees that this franchise fee is consistent with the probable value of the privileges granted by this CONTRACT as defined in this section.

(3) The Concessioner shall have no right to an adjustment of the fees except as provided below. The Concessioner shall have no right to waiver of the franchise fee.

(b) Payments Due

(1) The franchise fee shall be due on a monthly basis at the end of each month and shall be paid by the Concessioner in such a manner that the Director shall receive payment within fifteen (15) days after the last day of each month that the Concessioner operates. This monthly payment shall include the franchise fee equal to the specified percentage of gross receipts for the preceding month.

(2) The Concessioner shall pay any additional fee amounts due at the end of the operating year as a result of adjustments at the time of submission of the Concessioner's Annual Financial Report. Overpayments shall be offset against the following year's fees.

(3) All franchise fee payments consisting of $10,000 or more, shall be deposited electronically by the Concessioner using the Treasury Financial Communications System.

(c) Interest

An interest charge will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, that payment is delayed beyond the fifteen (15)-day period provided for above. The percent of interest charged will be based on the current value of funds to the United States Treasury as published quarterly in the Treasury Fiscal Requirements Manual. The Director may also impose penalties for late payment to the extent authorized by Applicable Law.

Sec. 8. Indemnification and Insurance

(b) Indemnification

The Concessioner agrees to assume liability for and does hereby agree to save, hold harmless, protect, defend and indemnify the United States of America, its agents and employees from and against any and all liabilities, obligations, losses, damages or judgments (including without limitation penalties and fines), claims, actions, suits, costs and expenses (including without limitation attorneys fees and experts fees) of any kind and nature whatsoever on account of fire or other peril, bodily injury, death or property damage, or claims for bodily injury, death or property damage of any nature whatsoever, and by whomsoever made, in any way relating to or arising out of the activities of the Concessioner, his employees, subcontractors or agents under this CONTRACT. This indemnification shall survive the termination or expiration of this CONTRACT.

(b) Insurance in General

(1) The Concessioner shall obtain and maintain during the entire term of this Contract at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of this CONTRACT. The Director shall approve the types and amounts of insurance coverage purchased by the Concessioner.

(2) The Director will not be responsible for any omissions or inadequacies of insurance coverages and amounts in the event the insurance purchased by the Concessioner proves to be inadequate or otherwise insufficient for any reason whatsoever.

(3) At the request of the Director, the Concessioner shall at the time insurance is first purchased and annually, thereafter, provide the Director with a Certificate of Insurance that accurately details the conditions of the policy as evidence of compliance with this section. The Concessioner shall provide the Director thirty (30) days advance written notice of any material change in the Concessioner's insurance program hereunder.

(c) Commercial Public Liability

(1) The Concessioner shall provide commercial general liability insurance against claims arising out of or resulting from the acts or omissions of the Concessioner or its employees in carrying out the activities and operations required and/or authorized under this CONTRACT.

(2) This insurance shall be in the amount commensurate with the degree of risk and the scope and size of the activities required and/or authorized under this CONTRACT, as more specifically set forth in Exhibit E. Furthermore, the commercial general liability package shall provide the coverages and limits described in Exhibit E.

(3) All liability policies shall specify that the insurance company shall have no right of subrogation against the United States of America and shall provide that the United States of America is named an additional insured.

(4) From time to time, as conditions in the insurance industry warrant, the Director may, in his discretion, modify Exhibit E to revise the minimum required limits or to require additional types of insurance.

Sec. 9. Bonds and Liens

(c) Bonds

The Director may require the Concessioner to furnish appropriate forms of bonds acceptable to the

Director conditioned upon faithful performance of its obligations under this CONTRACT, in such form and in such amount as the Director may deem adequate.

(d) Lien

As additional security for the faithful performance by the Concessioner of its obligations under this CONTRACT, and the payment to the Government of all damages or claims that may result from the Concessioner's failure to observe any such obligations, the Government shall have at all times the first lien on all assets of the Concessioner within the Area, including, but not limited to, all personal property of the Concessioner used in performance of the CONTRACT hereunder.

Sec. 10. Accounting Records and Reports

(a) Accounting System

(1) The Concessioner shall maintain an accounting system under which its accounts can be readily identified with its system of accounts classification. Such accounting system shall be capable of providing the information required by this CONTRACT. The Concessioner's system of accounts classification shall be directly related to the Concessioner Annual Financial Report Form issued by the Director.

(2) If the Concessioner's annual gross receipts are $250,000 or more, the Concessioner must use the accrual accounting method.

(3) In computing net profits for any purposes of this CONTRACT, the Concessioner shall keep its account in such manner that there can be no diversion or concealment of profits or expenses in the operations authorized hereunder by means of arrangements for the procurement of equipment, merchandise, supplies or services from sources controlled by or under common ownership with the Concessioner or by any other device.

(b) Annual Financial Report

(1) The Concessioner shall submit annually as soon as possible but not later than ninety (90) days after the last day of its fiscal year a financial statement for the preceding fiscal year or portion of a year as prescribed by the Director (''Concessioner Annual Financial Report'').

(2) If the annual gross receipts of the Concessioner are in excess of $1,000,000, the financial statements shall be audited by an independent Certified Public Accountant in accordance with the Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(3) If annual gross receipts are between $250,000, and $1,000,000, the financial statements shall be reviewed by an independent Certified Public Accountant in accordance with the Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(4) If annual gross receipts are less than $250,000, the financial statements may be prepared without involvement by an independent Certified Public Accountant, unless otherwise directed by the Director.

(c) Other Financial Reports

(1) *Balance Sheet.* Within ninety (90) days of the execution of this CONTRACT or its effective date, whichever is later, the Concessioner shall submit to the Director a balance sheet as of the beginning date of the term of this CONTRACT. The balance sheet shall be audited or reviewed, as determined by the gross receipts, by an independent Certified Public Accountant.

Sec. 11. Other Reporting Requirements

The following describes certain other reports required under this CONTRACT:

(a) Insurance Certification

As specified in Section 12, at the time insurance is first purchased, and annually thereafter, the Concessioner shall provide the Director with a Certificate of Insurance for all insurance coverages related to its operations under this CONTRACT. The Concessioner shall give the Director thirty (30) days advance written notice of any material change in its insurance program.

(b) Environmental Reporting

The Concessioner shall submit a quarterly report on any matters related to the Concessioner's environmental compliance requirements under this CONTRACT.

(c) Miscellaneous Reports and Data

The Director from time to time may require the Concessioner to submit other reports and data regarding its performance under the Contract or otherwise, including, but not limited to, operational information.

Sec. 12. Suspension and Termination

(b) Suspension

The Director may temporarily suspend operations under this CONTRACT in whole or in part when necessary for administrative purposes or to enhance or protect Area resources, visitor enjoyment or safety. No compensation of any nature shall be due the Concessioner in the event of a suspension of operations, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the suspension.

(b) Termination

(1) The Director may terminate this CONTRACT in whole or part at any time when necessary for the purpose of enhancing or protecting Area resources or visitor enjoyment or safety.

(2) The Director may terminate this CONTRACT in whole or part for default if the Director determines that the Concessioner has breached any requirement of this CONTRACT, including, but not limited to, the requirement to maintain and operate visitor services to the satisfaction of the Director, the requirement to provide only visitor services required or authorized by the Director, the requirement to pay the established franchise fee, and the requirement to comply with Applicable Laws.

(3) In the event of a breach of the CONTRACT, the Director will provide the Concessioner an opportunity to cure by providing written notice to the Concessioner of the breach. In the event of a monetary breach, the Director will give the Concessioner a fifteen (15) day period to cure the breach. If the breach is not cured within that period, then the Director may terminate the CONTRACT for default. In the event of a nonmonetary breach, if the Director considers that the nature of the breach so permits, the Director will give the Concessioner thirty (30) days to cure the breach, or to provide a plan, to the satisfaction of the Director in his sole discretion, to cure the breach over a specified period of time. If the breach is not cured within this specified period of time, the Director may terminate the CONTRACT for default. Notwithstanding this provision, repeated breaches of the same nature shall be grounds for termination for default without a cure period. In the event of a breach of any nature, the Director may suspend the Concessioner's operations as appropriate in accordance with Section 16(a).

(4) The Director may terminate this CONTRACT upon the filing or the execution of a petition in bankruptcy by or against the Concessioner, a petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, an assignment by the Concessioner for the

benefit of creditors, a petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this CONTRACT or any part thereof upon execution, attachment or other process of law or equity. The Director may terminate this CONTRACT if the Director determines that the Concessioner is unable to perform the terms of CONTRACT due to bankruptcy or insolvency.

(5) Termination of this CONTRACT for any reason shall be by written notice to the Concessioner.

(c) Notice of Bankruptcy or Insolvency

The Concessioner must give the Director notice fifteen (15) days prior to filing any petition in bankruptcy, filing any petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, or making any assignment for the benefit of creditors. The Concessioner must also give the Director immediate notice of any petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this CONTRACT or any part thereof upon execution, attachment or other process of law or equity. For purposes of the bankruptcy statutes, this CONTRACT is not a lease, but is an executory Contract exempt from inclusion in assets of Concessioner pursuant to 11 U.S.C. 1135.

(d) Requirements in the Event of Termination

(1) In the event of termination of this CONTRACT by the Director for any reason, no compensation of any nature shall be due the Concessioner including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the termination.

(2) Upon termination of this CONTRACT for any reason, and except as otherwise provided in this section, the Concessioner shall, at Concessioner's expense, promptly vacate the Area, remove all of Concessioner's personal property, repair any injury occasioned by installation of removal of such property, and ensure that Concession Facilities are in as good condition as they were at the beginning of the term of this CONTRACT, reasonable wear and tear excepted.

(e) Removal of Personal Property

Except as otherwise provided in this CONTRACT, upon expiration or termination of this CONTRACT for any reason, the Concessioner shall remove its personal property from the Area unless it is sold to the Director or a successor concessioner. No compensation is due the Concessioner from the Director or a successor concessioner for such personal property. The Director or a successor concessioner may purchase such personal property from the Concessioner subject to mutually agreed upon terms. Personal property not removed from the Area by the Concessioner as of the date of expiration or termination of this CONTRACT, unless the Director in writing extends such date of removal, shall be considered abandoned property subject to disposition by the Director, at full cost and expense of the Concessioner, in accordance with Applicable Laws.

Sec. 13. Assignment, Sale or Encumbrance of Interests

(a) This CONTRACT is subject to the requirements of 36 CFR Part 51 as it may be amended from time to time with respect to proposed conveyances and encumbrances as those terms are defined in 36 CFR Part 51, including, but not limited to, proposed management and subconcession agreements. Failure by the Concessioner to comply with 36 CFR Part 51 is a material breach of this CONTRACT for which the Director may terminate this CONTRACT for default. The Director shall not be obliged to recognize any right of any person or entity to an interest in this CONTRACT of any nature or operating rights under this CONTRACT, if obtained in violation of 36 CFR Part 51.

(b) The Concessioner shall advise any person(s) or entity proposing to enter into a transaction which may be subject to 36 CFR Part 51 of the requirements of that regulation.

Sec. 14. General Provisions

(a) The Director and Comptroller General of the United States, or any of their duly authorized representatives, shall have access to the records of the Concessioner as provided by 36 CFR Part 51 as it may now exist or be amended from time to time.

(b) All information required to be submitted to the Director by the Concessioner pursuant to this CONTRACT is subject to public release by the Director to the extent required or authorized by Applicable Laws.

(c) Subconcession or other third party agreements, including management agreements, for the provision of principal services required and/or authorized under this CONTRACT are not permitted. However, subconcession or other third party agreements may be allowed for incidental or specialized services which are incidental to the principal services required and/or authorized under this CONTRACT. Any proposal to provide incidental or specialized services through subconcession or other third party agreements must be submitted to the Director in writing, along with a copy of the proposed subconcession or third party agreement, and shall be effective only if approved in writing by the Director. If the Director approves a subconcession or other third party agreement, the Concessioner and the Director will amend the CONTRACT to reflect such approval. Agreements with others to provide vending or other coin-operated machines shall not be considered subconcession agreements.

(d) The Concessioner is not entitled to be awarded or to have negotiating rights to any Federal procurement or service Contract by virtue of any provision of this CONTRACT.

(e) Any and all taxes or assessments of any nature that may be lawfully imposed by any State or its political subdivisions upon the property or business of the Concessioner shall be paid promptly by the Concessioner.

(f) No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this CONTRACT or to any benefit that may arise from this CONTRACT but this restriction shall not be construed to extend to this CONTRACT if made with a corporation or company for its general benefit.

(g) This CONTRACT is subject to the provisions of 43 C.F.R., Subtitle A, Subpart D, concerning nonprocurement debarment and suspension. The Director may recommend that the Concessioner be debarred or suspended in accordance with the requirements and procedures described in those regulations, as they are effective now or may be revised in the future.

(h) This CONTRACT contains the sole and entire agreement of the parties. No oral representations of any nature form the basis of or may amend this CONTRACT. This Contract may be extended, renewed or amended only when agreed to in writing by the Director and the Concessioner.

(i) The Concessioner is not granted by this CONTRACT any rights to renewal of this CONTRACT or to award of a new CONTRACT of any nature.

(j) This CONTRACT does not grant rights or benefits of any nature to any third party.

(k) The invalidity of a specific provision of this Contract shall not affect the validity of the remaining provisions of this CONTRACT.

Sec. 15. Special Provisions

[OPTIONAL—To be used when operating and maintenance requirements are incorporated in the body of the CONTRACT, rather than as a separate operating and maintenance plan.]

In witness whereof, the duly authorized representatives of the parties have executed this CONTRACT as of the_____day of_____,_____.

Concessioner:

By (Title) (Company Name)

United States of America:

By Director, National Park Service

[Corporations]

Attest:

By _____

Title _____

[Sole Proprietorship]

Witnesses:

Name _____

Address _____

Title _____

Name _____

Address _____

Title _____

[Partnership]

Witnesses as to each:

Name _____

Address _____

Name _____

Address _____

[Concessioner]

(Name) _____

(Name) _____

Dated: December 1, 1999.

Maureen Finnerty,

Associate Director, Park Operations and Education, National Park Service.

[FR Doc. 99–31752 Filed 12–20–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Record of Decision, General Management Plan and Environmental Impact Statement, Gettysburg National Military Park, Adams County, PA

SUMMARY: Pursuant to section 102 (2)(c) of the National Environmental Policy Act of 1969, as amended, and the regulations promulgated by the Council on Environmental Quality (40 CFR 1505.2), the Department of the Interior, National Park Service, has prepared a Record of Decision on the Final General Management Plan/Final Environmental Impact Statement for Gettysburg National Military Park, Adams County, Pennsylvania.

DATES: The Regional Director, Northeast Region, approved the Record of Decision on November 23, 1999.

FOR FURTHER INFORMATION CONTACT: Superintendent, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, PA 17325, telephone 717–334–1124.

SUPPLEMENTARY INFORMATION:

Introduction

The Department of the Interior, National Park Service (NPS) has prepared this Record of Decision on the Final General Management Plan and Environmental Impact Statement for Gettysburg National Military Park (NMP), Pennsylvania. This Record of Decision is a statement of the background of the project, the decision made, the basis for the decision, other alternatives considered, the environmentally preferable alternative, measures to minimize environmental harm, and the public involvement in the decision making process.

Background of the Project

Park Significance, Legislative Purpose, Mission and Mission Goals

Gettysburg NMP, located in Adams County, Pennsylvania, was established to preserve the nationally significant resources of the Battle of Gettysburg, the Soldiers' National Cemetery and the commemoration and preservation of the battlefield. The battle was the largest and most costly in human terms to occur on the North American continent. It lessened the Confederacy's ability to successfully wage war and contributed to the ultimate preservation of the United States. The creation of the Soldiers' National Cemetery, and Abraham Lincoln's Gettysburg Address, heightened Americans' sense of the meaning and importance of the war. The national park inspired by those who experienced the Civil War preserved major features of the 1863 battlefield and commemorated the valor and sacrifice of the participants. These elements make Gettysburg a place where Americans continue to remember and honor those whose struggle led to a united nation.

As part of its compliance with the Government Performance and Results Act of 1993, NPS developed for each unit of the national park system a legislative purpose statement, a mission statement and mission goals. NPS developed these elements in consultation with the Pennsylvania State Historic Preservation Officer, the Gettysburg National Military Park Advisory Commission, other interested agencies and organizations, and the public.

The legislated purposes of Gettysburg NMP are:

- To preserve the topographical, natural and cultural features that were significant to the outcome of the Battle of Gettysburg.
- To mark the lines of battle, and to preserve the monuments and markers that commemorate the struggle.
- To provide opportunities for people to learn about the Battle of Gettysburg in the full social, political and cultural context of the Civil War and American History.
- To preserve the objects, artifacts and archives that document the battle, its aftermath and commemoration.

The mission that NPS has established for Gettysburg NMP is: To preserve and protect the resources associated with the Battle of Gettysburg and the Soldiers' National Cemetery, and to provide understanding of the events that occurred here, within the context of American history.

The four mission goals that NPS established for Gettysburg NMP are:

- The landscapes, buildings, monuments, structures, archeological sites, artifacts and archives that are significant to the outcome and commemoration of the Battle of Gettysburg are protected, rehabilitated and maintained in good condition.
- The public understands and appreciates the significant events associated with the Gettysburg Campaign and its impact upon the development of the nation.
- Visitors safely enjoy high quality educational experiences accessible to all segments of the population.
- Public and private entities understand the park's mission and act cooperatively to protect and interpret resources related to the Gettysburg Campaign and its commemoration.

The Need for a New General Management Plan

The purpose of a General Management Plan/Environmental Impact Statement (GMP/EIS) is to set forth a basic management philosophy for a park and to provide a framework for future decision making. NPS' Management Policies require that a park's GMP be reviewed periodically and revised or amended as necessary to reflect new issues or management objectives, or when it has exceeded the period for which it was developed, which is usually 15 years. (NPS Management Policies, Chapter 2:6) The park's last GMP was completed more than 17 years ago, in 1982; although the plan continues to be used as a general

guide for operations, it is no longer adequate to address the policy and operational issues now facing the park's managers.

Since the completion of the 1982 plan, the boundaries of the park have changed, adding more than one-third to its total acreage. NPS has determined that the park contains three nationally significant landscapes, only one of which NPS considered fully in the 1982 GMP. Some of the most important resources of the park are sustaining damage from visitors. In other cases, such as at Ziegler's Grove, Culp's Hill, and the second day's battlefield, changes to the natural and built environment have obscured the underlying historic landscape of the battle. NPS surveys of its collections and archives revealed that lack of adequate, environmentally controlled storage space was causing these resources to deteriorate. The lack of an appropriately sized and environmentally controlled gallery for the cyclorama painting, ''Battle of Gettysburg,'' meant that it, too, was sustaining damage. The park's increasing visitation, the changing educational needs of its visitors, and the demands placed on its visitor infrastructure, exceed NPS' ability to provide necessary services. Therefore, at Gettysburg NMP, a new GMP/EIS was needed to provide guidance for stewardship and interpretation of the park's three nationally significant landscapes—the site of the Battle of Gettysburg, the Soldiers' National Cemetery, and the commemorative landscape of avenues and monument—as well as its collections and archives. Consequently, the decision was made to begin a general management plan with an environmental impact statement in order to reach a decision regarding the specific resource conditions and visitor experiences that NPS should achieve and maintain at Gettysburg NMP.

The Planning Process

NPS began the EIS process on May 5, 1997 with the publication in the **Federal Register** of a Notice of Intent to prepare a draft EIS. Scoping meeting were held to identify issues and concerns relating to the proposed general management plan. NPS published the Notice of Availability of the draft EIS in the **Federal Register** on August 18, 1998. The comment period on the draft ended October 17, 1998. NPS responded to substantive comments in the Final GMP/EIS, which was released on June 18, 1999. The Notice of Availability of the Final GMP/EIS appeared in the **Federal Register** on June 25, 1999.

The Final General Management Plan/Environmental Impact Statement has been prepared to satisfy the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended, which requires the evaluation of potential impacts resulting from federal actions. It includes a description of the environment affected by the proposed activities and the environmental consequences of implementing any of the alternatives.

The Final General Management Plan/Environmental Impact Statement is a programmatic statement. The proposed action and alternatives consist of a basic management framework for future decision making; therefore, site-specific details and recommendations are not always included. Consequently, the statement presents an overview of potential impacts relating to the proposed program for each alternative. In the future, if NPS determines that specific actions called for by the approved plan require additional analysis of impacts, more detailed assessments of impacts may be prepared as part of necessary implementation planning. These documents will be tiered from this environmental impact statement.

In the process of preparing this GMP/EIS, NPS conducted new research and analysis on the battle and its relationship to the contested terrain. Based on careful study of period documents, NPS delineated those battlefield landscape features that were significant to the outcome of the battle, as well as the locations of combat. NPS also studied the features that characterize the Soldiers' National Cemetery and the battle's commemoration. In addition, NPS conducted an extensive assessment to compare present day landscape features to those that existed at the time of the battle. Through this work, NPS divided the resources of Gettysburg NMP into five priority and two other categories. Resources in Priority categories 1, 2, and 3 are essential to the reasons for which Gettysburg NMP was designated by Congress, and their preservation and rehabilitation is mandatory if NPS is to meet its legislative purposes at this park. Resources in Priority categories 4 and 5 include other types of resources, such as non-battle related wetlands, that NPS must consider according to law or NPS policies. Other categories included tools, such as visitor centers, and non-contributing features.

This information was used to delineate resource areas: the Major Battle Action Area, the Soldiers' National Cemetery and the Battlefield Commemorative Area. Each of these resource areas contains a concentration of essential park resources. NPS must protect these resources in order to maintain unimpaired the values for which Congress designated the park. NPS used these resource areas to differentiate actions for the GMP alternatives.

Combination of Other Ongoing Planning With the General Management Plan

In 1994, several years before the initiation by NPS of a new GMP for Gettysburg NMP, NPS had begun a process to consider changes to its visitor center and museum facilities. The current visitor center and museum facilities at Gettysburg NMP are located on land that was central to the Battle of Gettysburg and they are visible from large portions of the battlefield as contemporary intrusions on the battlefield's historic setting. In addition, the facilities are greatly inadequate to meet visitor and curatorial needs. For these reasons, construction of new museum and visitor center facilities in a more suitable location has long been an objective of the park. However, Federal funding limitations have effectively precluded the possibility of constructing replacement facilities with government funds.

The concept of a public/private cooperative effort to solve some of the visitor center and curatorial needs was first considered by NPS when a local developer proposed a new Cyclorama Building paired with a private IMAX theater on a piece of park-owned land. In order to respond to the unsolicited offer, NPS held three public workshops and in March 1995 developed a draft plan/environmental assessment to evaluate the proposal. After a total of 65 days of public and agency review, NPS decided to look at additional options for the building's configuration and initiate a nationwide call for cooperators.

Between August 1995 and April 1996, NPS prepared a Draft Development Concept Plan/Environmental Assessment (DCP) to explore alternatives for the center. The DCP included four alternative concepts for the new facilities: a no action alternative; building a collections and archival storage facility and leaving the Cyclorama and Visitor Center as they are now; renovating the existing Visitor Center in place and building a new Cyclorama Building with collections storage; and building a new combined facility incorporating all these uses on a site removed from significant battle action (the preferred option indicated in the Draft DCP/EA). As a part of the development of this plan, NPS held a series of workshops, focus group

meetings, and community presentations for the purpose of understanding public concerns, writing goals for the facility, and developing criteria for judging proposals and sites.

After considering public comments on this concept plan, in 1996 NPS issued a Request for Proposals, Visitor Center and Museum Facilities, Gettysburg National Military Park (RFP). The RFP solicited specific proposals from non-Federal sources to enter into a cooperative agreement with NPS to provide new visitor center and museum facilities either on park land or on non-park land in the vicinity of the park. The terms of the RFP invited creative proposals from all possible sources with few limitations so long as they furthered the NPS goals for the new facilities. The RFP required that proposals suggest a site for the facilities within a specific area of consideration (extending beyond the boundaries of the park). Among other matters, the RFP noted that a reevaluation of environmental issues would be a part of the process for entering any agreement, and that depending on the proposal an amendment to the current General Management Plan might be required.

NPS, as of the RFP closing date of May 16, 1997, received six proposals. On November 8, 1997, the Director of the National Park Service announced that it had selected a proposal for negotiation. NPS selected the proposal because it offered to have a non-profit corporation provide the facilities sought by NPS on an excellent site and ultimately would result in the donation of the facilities to Gettysburg NMP.

Although the proposal was judged as the best overall proposal received in response to the RFP, NPS pointed out that there were aspects of the proposal that needed to be negotiated in order to achieve an acceptable cooperative agreement. As part of this process, NPS sought public comment on the proposal through environmental and other public review processes between November 1997 and spring 1998.

Scoping for the park's new General Management Plan and Environmental Impact Statement had been initiated in April 1997. Based on public input received from the DCP, the GMP/EIS and other public comment, NPS determined that it was desirable to incorporate the issues of visitor use and interpretation at the visitor center and museum facilities as an element of its forthcoming draft GMP/EIS.

Relationship of the General Management Plan to Other Plans and Processes

1990 Boundary Legislation/1993 Land Protection Plan: The GMP/EIS is based upon the park boundaries defined by Public Law 101–377, An Act to Revise the Boundary of Gettysburg National Military Park. The priorities and planned actions for protecting lands within the 1990 boundary are detailed in the park's 1993 Land Protection Plan. The action alternatives in the GMP/EIS describe several minor boundary adjustments and other actions needed to address deficiencies in the 1990 legislation and the 1993 Land Protection Plan.

1995 White-Tailed Deer Management Plan /Environmental Impact Statement: In 1994, NPS released a draft white-tailed deer management plan and environmental impact statement (white-tailed deer management plan). This white-tailed deer management plan reviewed alternatives for managing the population of white-tailed deer at Gettysburg NMP and Eisenhower NHS. In June 1995, NPS approved the white-tailed deer management plan and a record of decision was signed. NPS determined in the white-tailed deer management plan that a deer density of 25 deer per forested square mile must be maintained at Gettysburg NMP and Eisenhower National Historic Site. There is nothing in the GMP/EIS for Gettysburg NMP that will affect this desired deer density, hence the white-tailed deer management plan is not affected by the GMP/EIS.

Government Performance and Results Act Strategic Park Management Plan: In 1997, NPS developed a systemwide plan to meet the requirements of the Government Performance and Results Act of 1993. As previously noted, as a part of its compliance with this act, NPS develops for each unit of the national park system a new significance statement, legislative purpose statements, mission statement, mission goals and long term goals to guide management of the park (the Strategic Park Management Plan). At Gettysburg National Military Park, this plan was developed in consultation with the State Historic Preservation Officer, the Gettysburg National Military Park Advisory Commission, other interested agencies and organizations, and the general public. The action alternatives developed in the GMP/EIS are based upon the significance, purpose, mission and mission goals outlined in the park's Strategic Park Management Plan.

Decision (Selected Action)

The National Park Service will implement Alternative C, the proposed plan, (the selected action), as described in the Final General Management Plan and Environmental Impact Statement issued in June 1999.

The intent of the selected action is to rehabilitate the Gettysburg battlefield so that the features that were significant to the outcome of the battle and its commemoration more nearly reflect their historic conditions. The selected action will identify and protect the resources that contribute to the park's national significance, including its three nationally significant landscapes: the site of the Battle of Gettysburg, the Soldiers' National Cemetery, and the commemorative landscape of avenues and monuments built by the battle's veterans. Through the construction of new museum and collections storage facilities, the selected action will also provide improved protection for the cyclorama painting, a National Historic Object, and for the park's extensive collections and archives. The combination of rehabilitated historic landscapes and improved museum interpretation in the new facility will allow visitors to understand the Battle of Gettysburg, its aftermath and commemoration within the full context of American history. Because the present Visitor Center and Cyclorama Building are located virtually on Ziegler's Grove, one of the most historically significant areas of the battlefield, NPS is compelled to remove these structures and restore the historic scene. Partnerships with private entities and local and state governments will permit increased protection and interpretation of Civil War resources, as well as of historically significant viewsheds and roads outside of the park's boundaries. Together, these actions will allow NPS to meet the legislative purposes of the park.

Specifically, under the selected action, NPS will rehabilitate both the significant large-scale and small-scale elements of the park's historic landscape. NPS will reinstitute the pattern of open fields and wooded areas, and the historic circulation system of lanes, present during the battle. This will restore within the Battle Action Resource Area the fields of view that prevailed in 1863 and allow visitors to understand how the armies moved across the landscape. The selected action also includes within the Battle Action Resource Area the rehabilitation of those small-scale landscape elements-fences, woodlots, orchards and other features-that were significant to the

outcome of the battle. The selected action will enable visitors to appreciate the obstacles and terrain that confronted individual troops during the conflict.

The selected action will rehabilitate the major landscape features and circulation of the Civil War portion of the Soldiers' National Cemetery, as well as its significant design features. Together these actions will allow visitors to understand the equality of sacrifice made by those who lost their life in the battle, as intended by the designer of the Soldiers' National Cemetery.

The selected action will also restore the major features of the park's Battlefield Commemorative Area, including monument groups. The selected action will provide for enhanced protection of these resources, which are the most threatened by visitor overuse. It will incorporate coordinated measures to manage visitor use and transportation, including a shuttle to provide access to park sites and a link to downtown. This will respond to visitor desires to see the battlefield while protecting sensitive cultural and natural resources from damage. The selected action will also revise agricultural practices in order to protect historic and natural resources through such means as altering mowing schedules to protect nesting birds, removing wetlands and streambanks from pastures, utilizing low-till and no-till methods, and limiting pesticide use. (Historic field patterns will be recreated by erecting fences or hedgerows in existing historic crop fields and in newly opened areas.)

The selected action will provide a new museum complex, located at a site outside the Battle Action Resource Area, where NPS could provide adequate protection for its archives, collections and the cyclorama painting and provide necessary visitor services without harming the historic landscapes of the park. The museum facilities proposed in the selected action will provide adequate facilities for the protection of the park's remarkable collections and archives. A new gallery for the cyclorama painting, ''Battle of Gettysburg,'' will allow the painting to be properly hung and displayed in an environmentally stable gallery, which is critical to its preservation. A new facility will greatly improve museum interpretation at the park, and place the Gettysburg Battle in its larger context of the Civil War and the Gettysburg Campaign. The complex will be built by a private foundation at no cost to the government, and NPS will retain final approval on all decisions that would affect the complex's design, interpretation or use. The complex will include necessary and appropriate visitor services that are entirely consistent with the purposes of the park and NPS policy.

The Visitor Center and Cyclorama Building are currently located on some of the Battle of Gettysburg's most historically significant land along Cemetery Ridge, known as Ziegler's Grove. Ziegler's Grove was at the center of the Union line during the second and third days of the battle, and was the site where more than 6500 men fought. To achieve the park's legislative mandate park managers determined to return Ziegler's Grove to its 1863 appearance by removing the intrusive Visitor Center and Cyclorama Building. The relocation of visitor facilities to a new site near their existing location but on land that was not significant to the outcome of the battle will allow restoration of Ziegler's Grove, the area that was the center of the Union Line during the second and third days of the battle.

The selected action will include measures to interpret the role of both soldiers and noncombatants, and will strengthen the interpretation of the role of the town of Gettysburg in the battle and its aftermath and link it to the battlefield. It will expand partnerships and cooperative initiatives with entities at all levels, especially those that could protect the historically agricultural character of significant battle and Civil War sites outside the park's boundary, the character of historic road corridors and park gateways, and important park viewsheds. The approach to rehabilitation incorporated in the selected action will broaden the scope of overall interpretation and expand the number of venues that could be well understood by and interpreted to visitors. In turn, the opening of new sites for interpretation will provide relief for heavily visited and adversely impacted sites. The selected action also adopts a previously approved Development Concept Plan/ Environmental Assessment, which proposed consolidation of park offices and visitor facilities not included in the park's museum and visitor center to a site within the Visitor and Park Services Overlay Area.

Basis for Decision

Alternative C, the proposed plan in the Final GMP/EIS and the selected action, provides the most desirable combination of resource preservation, visitor interpretation and experience, and cost-effectiveness among the alternatives considered for meeting the legislative purposes and mission of Gettysburg NMP. The selected action will allow NPS fully to meet both its resource preservation and interpretive mandates.

The selected action will significantly improve resource protection. The selected action will preserve and rehabilitate the features that were significant to the outcome of the battle and allow the restoration of Ziegler's Grove, the site of some of the most intense and bloodiest fighting of the war. It will significantly enhance preservation and rehabilitation of the nationally significant Soldiers' National Cemetery, the site of Lincoln's Gettysburg Address and of the burial of many Union dead. It will preserve the nationally significant commemorative corridors of Gettysburg NMP by providing for the restoration of monument groups (markers, monuments, cannon, etc.) and by limiting future damage from visitor overuse to sensitive resources here. Transportation management will further protect sensitive resources from vehicular damage. New collections storage will provide adequate conditions for the preservation and curation of the park's collections and archives. A new, environmentally stable gallery in which the conserved cyclorama painting will be displayed will allow NPS to stem further deterioration and adequately preserve this National Historic Object.

Changes in the management of the park's agricultural program to enhance surface water quality in the park's streams and ponds, enhance streambank stabilization and reduce soil erosion will protect watershed areas considered significant to the Chesapeake Bay. The combination of removal of non-historic woodlands and changes in the agricultural tilling, mowing and haying techniques will allow NPS to better protect the state-listed open-land species that inhabit the park.

In addition, the selected action will encourage partnerships with private entities and local and regional governments to protect, preserve and interpret resources that are related to the Battle of Gettysburg, its aftermath and commemoration that are located outside of park boundaries. The selected action calls for partnership actions to preserve resources and interpret the role of the Borough of Gettysburg in the battle, its aftermath and the ongoing preservation of the battlefield. It also encourages partnerships with private entities and local and regional governments to protect the agricultural setting of the park and major roadways leading to the park, including Taneytown Road and Baltimore Pike, elements that are important to a visitor's experience.

These actions should limit somewhat the amount of significant battle and Civil Wars sites outside the park boundary lost to commercial and suburban development.

The selected action also will greatly improve interpretation of the Battle of Gettysburg, its aftermath and commemoration both through enhanced museum interpretation as well as through landscape restoration. New museum exhibits will provide substantially improved interpretation of the battle in its full context, as required by the park's legislation. Visitors' experiences in the park will be improved, both in the museum complex and on the battlefield. Visitors will receive improved orientation and information about how to use the park. Rehabilitation of the landscape will allow visitors to understand both the movements of the armies as well as the impact of the battle on individual soldiers. Rehabilitation of the Soldiers' National Cemetery will allow visitors to understand the meaning inherent in its design, a meaning so eloquently defined by Abraham Lincoln in the Gettysburg Address.

Implementation of this action will increase visitation and length of stay at the park, which in turn will increase per capita spending by 10% over current levels. The combination of higher per capita spending and a moderate increase in visitation means that visitors will spend an additional $24,278,900 annually in the communities adjacent to the park, an increase of 21.5% over current spending levels. (Final GMP/EIS, 91–92, 282–286)

Other Alternatives Considered

The Final General Management Plan/Environmental Impact Statement describes four alternatives for management, the environment that will be affected by those alternatives, and the environmental consequences of implementing these action alternatives. The major topic areas covered in each alternative are related to the park's four mission goals, and include resource protection and rehabilitation, visitor interpretation, visitor experience, and partnerships. Major impact topics include impacts to cultural resources, impacts to natural resources, impacts to visitor interpretation and experience, impacts to the socio-economic environment, impacts to traffic, parking and transit, and impacts to park operations.

NPS considered three alternatives in addition to Alternative C, the proposed plan. They are:

Alternative A: Continuation of Current Management

This alternative assumed continuation of current policies and associated actions. It provided a baseline for comparison of the other alternatives and is required by the National Environmental Policy Act regulations. Alternative A retained the management guidance and direction of the 1982 General Management Plan and the subsequent Management Objectives developed in the 1988 Statement for Management. This alternative retained the management zones defined by the 1982 GMP and would have continued the management policies articulated in that document towards the landscape, park facilities, and visitor use management. Under this management strategy, NPS would have continued to preserve existing features and resources significant to the battle. Existing historic cropfields and woodlots would have continued to be preserved and maintained in their current conditions, using contemporary agricultural techniques. The Soldiers' National Cemetery would have continued to be managed to maintain and perpetuate modern vegetation and changes made for maintenance with modern equipment. In the commemorative area, individual monuments and monument groups would have continued to be preserved and restored, and the formal designed corridor in which the War Department placed them would have been recalled by mowing of the area. Modern features, such as parking areas, bollards, paths, fencing or other restraints would have been added as needed to protect resources from overuse and damage by pedestrians and vehicles. NPS would have continued to manage Big Round Top as a natural area. NPS managers rejected this option among other reasons because it failed to provide adequate protection to the park's three historic landscapes, did not allow for the restoration of Ziegler's Grove, and did not provide adequate protection for the park's archives, collections and the cyclorama painting. For a fuller discussion of the issues surrounding a continuation of current management policies, see the discussion of issues considered on pages 10–17 of the Final GMP/EIS.

Alternative B: Minimum Required Actions

This alternative included the least costly set of actions that would have responded minimally to the park's mission goals. Alternative B incorporated rehabilitation of large-scale landscape features in the Major Battle Action Area and the Soldiers' National Cemetery and preservation of other 1863 features. It would also have provided a new museum complex to replace obsolete facilities and meet the park's interpretive goals. Because the actions included in Alternative B were considered necessary to meet minimally the park's mission goals, the actions recommended in this alternative were also incorporated into Alternative C, the selected action, and Alternative D.

As a part of Alternative B, the rehabilitation of large-scale landscape features would have reinstated the patterns of open and wooded areas within the Major Battle Action Area, including restoration of Ziegler's Grove. Because of this action, NPS would be able to represent accurately the patterns of open land vs. forested land present during the battle in the areas where major battle action occurred. This would allow visitors to visualize and understand the major movements of the armies and to appreciate tactical decisions made by its leaders. Alternative B would not, however, have rehabilitated the small-scale features that were significant to the outcome of the battle, such as fence lines or orchards.

Alternative B also suggested rehabilitation of the large-scale landscape and designed features that characterize the Saunders design for the Soldiers' National Cemetery. Under this alternative, the cemetery would have remained in its modern condition, except that the vegetation and circulation in the Civil-War portion of the cemetery would have been managed so that visitors could understand the ideas of equality expressed by Saunders in the design. These ideas parallel those expressed by Abraham Lincoln in his Gettysburg Address. The commemorative landscape would have been managed similarly to Alternative A.

This alternative incorporated the development of a new museum complex and associated facilities that could provide improved interpretation and visitor services, located on a site that was not pivotal to the outcome of the battle. Enhanced programs would have provided broad, in-depth interpretation of the causes and consequences of the Gettysburg Campaign, its impact on participants and noncombatants, and the enduring meaning of the Gettysburg Address. Strong linkages would have been provided from the park and the proposed museum complex to historic structures at the center of the Borough of Gettysburg. NPS would have worked cooperatively with partners to communicate the role of key in-town

sites during and after the battle. Based on such agreements, an NPS presence would have been possible to interpret these topics.

The broad initiatives of this alternative would have improved the visitors' understanding of the battle landscape by making it possible for them to understand the movements of the armies—the generals' perspective—and by providing greatly improved centralized interpretation of the causes and consequences of the Gettysburg Campaign. Alternative B also incorporated visitor activity management policies that would have improved the condition of park resources by limiting damage from visitor use.

This alternative provided for better protection of the park's landscape and historic resources than did Alternative A, no action. However, NPS managers rejected this option because they considered that the rehabilitation of both the large-scale features and the small-scale features that were significant to the outcome of the Battle of Gettysburg, its aftermath and commemoration (as called for in Alternative C, the selected action) would more fully meet the park's legislative mandates by preserving and rehabilitating all features that were significant to the outcome of the battle. In addition, although Alternative B would have improved interpretation of the battlefield, especially of the general's perspective, the selected action would allow visitors to understand not only the general's perspective but also the impact of the battle upon individual combatants and civilians.

Alternative D: Maximum Park Rehabilitation

This alternative included the resource management, interpretive and museum facilities actions included in Alternative C. However, Alternative D expanded on the resource management actions described in Alternative C by recommending additional rehabilitation and restoration. Alternative D proposed restoring the entirety of the known and documented battle landscape in the Major Battle Action area and the significant elements outside the Major Battle Action area included in the other resources area. This alternative would have rehabilitated all identifiable historic features, regardless of their significance to the outcome of the Battle of Gettysburg.

Rehabilitation of missing features from the commemorative era, principally along the system of commemorative avenues, would have allowed visitors to experience the commemorative park built by battle veterans. Interpretation would have relied heavily on the new museum complex to provide the context overview, and assumed that visitors would be able to understand those stories without extensive field interpretation because NPS had fully restored the battlefield, cemetery and commemorative landscapes.

Modern wayside signs would have been removed and visitors would have had to rely on the system of markers placed by the park's veterans to understand and experience the park. Visitors would have been encouraged to concentrate their travel along the commemorative avenues, and alternative means of transport and interpretation would have encouraged visitors to tour the battlefield with far less reliance on private vehicles than currently.

Although this alternative provides for better protection of the park's landscape and historic resources than Alternative A, and for more extensive rehabilitation than either Alternative B or C, NPS managers rejected it because the environmental and dollar costs were much greater than any other alternative because it proposed rehabilitation of the entire park, including places that were not the site of major battle action. In addition, NPS managers did not consider that this alternative could provide significantly improved resource protection or interpretation.

Other Alternatives Considered

In addition, a number of other alternatives were considered by the planning team or in public workshops, but not included for further consideration in the Draft GMP/EIS. These are discussed in detail on pages 58–60 of the Final GMP/EIS.

Two additional alternatives were proposed and reviewed with the public in workshops and were presented in GMP newsletters. These alternatives were called Improve Areas of Most Intensive Use, and Diversified Visitor Experience. The first recommended traffic free zones representing each day of the battle, where special interpretation, resource protection and other actions would occur. The public generally felt that this approach was too restrictive and placed too much emphasis on first time visitors. The second alternative placed its emphasis on innovative interpretation of the battlefield. NPS would have concentrated its resources on interpretation rather than on rehabilitation and restoration, although a minimum level of rehabilitation of the park's landscapes was included. Most participants liked the idea of expanded interpretation, but believed it should be combined with the higher levels of rehabilitation and preservation proposed by the other alternatives.

The GMP team considered two other alternatives, Full Restoration and Interpretation Only. The first responded to the perception among some participants in the public process that the battlefield should be fully restored to its 1863 condition. However, NPS determined that this was not feasible and would not comply with the Secretary's Standards for Historic Preservation because of its impact on the park's two nationally significant post-battle landscapes, the Soldiers' National Cemetery and the commemoration built by battle veterans. The Interpretation Only alternative would have included no rehabilitation and restoration of park features. However, visitor surveys, comment during scoping, and experience with visitors on the site convinced NPS managers that this approach could not meet the park's interpretive goals. In addition, NPS managers believed that this approach would not allow NPS to meet its legislative purposes. For these reasons, these four alternatives were eliminated from further consideration.

NPS' consideration of alternatives for its visitor facilities, through the development of the draft DCP and its RFP process is discussed in the Background of the Project section of this ROD.

Environmentally Preferable Alternative

The environmentally preferred alternative is defined as ''the one that will promote National Environmental Policy as expressed in the National Environmental Policy Act'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 the historic, cultural, and natural resources in the area where the proposed action is to take place.'' (''Forty Most Asked Questions Concerning Council on Environmental Quality's (CEQ) National Environmental Policy Act Regulations,'' 1981).

The environmentally preferred alternative is Alternative C, the selected action. Alternative C best protects, preserves and enhances the historic, cultural and natural resources of Gettysburg NMP. In particular, the selected action: increases the ability of the park to protect, preserve and enhance the historic and cultural resources of the park and meet its

legislative mandate; minimizes the loss of forest cover while achieving the park's critical cultural resource goals; improves the capability of the park's natural environment to support the state-listed open land species; and allows NPS to meet more fully the requirements of the Chesapeake Bay Program. As noted above, the selected action improves the ability of NPS to protect the essential resources of Gettysburg NMP. Through this proposal, NPS could: preserve and rehabilitate the resources considered significant to the outcome of the battle; protect the cyclorama painting, collections, and archives; and preserve and rehabilitate the significant features of the Soldiers' National Cemetery and commemorative landscapes of the park. The selected action allows NPS fully to meet the requirements of Gettysburg NMP's legislation at the least cost to the environment, park visitors and the Federal budget. The provision of new museum facilities on a site removed from the park's most important resources means that NPS could restore these significant areas.

Although the new construction needed to consolidate the park's museum and visitor facilities would permanently remove 18 acres of land, including up to 2 acres of wetlands, at the new site as wildlife habitat, NPS will be able to restore about 38 acres of meadow, orchard and woodlands that were very significant to the outcome of the battle at the sites of the current facilities. The selected action proposes the removal of only as much non-historic forest as is needed to meet the park's legislative purposes and mission goals. In addition, under the selected action, NPS will maintain as historic woodlots the number of acres needed in order to meet the park's legislative purpose. The gradual removal of some non-historic forest will increase the total acreage of open land in the park, because those areas will be reestablished as open grasslands, pastures, or orchards. The increased area of open grassland will improve and expand the habitat needed to support the sensitive state-listed species that occur within the park, almost all of which are open land species. NPS will more fully meet the requirements of the Chesapeake Bay Program by protecting sensitive watersheds from cattle and other agricultural damage. NPS will institute changes in its management of the park's agricultural permits to enhance surface water quality in the park's streams and ponds, enhance streambank stabilization, and reduce soil erosion. In addition, these changes will mean that up to 100 acres of wetlands eliminated by draining for agricultural purpose since the time of the battle will eventually be rehabilitated. Alternative A, as described in the Final General Management Plan/Environmental Impact Statement, does not provide adequate protection for the park's three historic landscapes, its cultural and natural resources, or its collections, archives and the cyclorama painting and therefore does not meet the park's legislative mandate.

Alternative B, as described in the Final General Management Plan/Environmental Impact Statement, would provide many of the same cultural and natural resource benefits as described in the selected action. Both alternatives would include the rehabilitation of the pattern of open vs. closed areas present during the battle, actions to preserve resources in the Soldiers' National Cemetery and the commemorative Resource Area, reformulation of the park's agriculture program, and provision of new visitor facilities. However, Alternative C, the selected action, more fully meets NPS' legislative purposes because it provides for the protection and, where needed, the rehabilitation, of all features that were significant to the outcome of the Battle of Gettysburg, its aftermath and commemoration. Alternative B merely provides for the rehabilitation of a subset of those resources during the period of the plan.

Alternative D, as described in the Final General Management Plan/Environmental Impact Statement provides for maximum rehabilitation of the park's landscapes, including all features that could be documented. This would provide for rehabilitation of landscapes and features beyond that called for by the park's legislative purposes. Although this could provide a more complete experience of the conditions prevalent in 1863, the environmental costs would be concomitantly greater. Because park managers do not consider that additional restoration would significantly improve interpretation or protection of essential resources, the additional environmental costs would not be warranted.

The selected action provides the appropriate balance between protection and rehabilitation of the park's significant cultural and natural resources and environmental costs.

Measures to Minimize Environmental Harm

NPS has identified and incorporated into the selected action all practical measures to avoid or minimize environmental impacts that could result from its implementation. These measures are presented in detail in the Final General Management Plan/Environmental Impact Statement.

Rehabilitation of the features that were significant to the outcome of the Battle of Gettysburg, its aftermath and commemoration has the potential to cause environmental harm. NPS will take the following actions to avoid or minimize harm resulting from these actions:

- Impacts to known and unknown archeological resources due to tree removal will be mitigated and minimized by implementing Section 106 of NHPA, through the use of best management practices, and through appropriate design that will allow for little ground disturbance.
- Use of best management practices will minimize impacts to topography due to tree removal and existing roads and lanes will be used so that no new roads will need to be constructed.
- Short-term impacts to soils due to tree removal will be minimized using best management practices.
- Tree removal may have an impact to roosting and nesting areas of black vultures in the park. These actions will be mitigated by leaving the white-pine trees typically used by vultures and by leaving small clumps and mature trees around known nesting areas.
- Tree removal may have an impact on certain species of the fauna of the park. None of these species are rare or of special concern. However, NPS will minimize these impacts by using best practices and by monitoring of specific taxa.
- Localized steam water temperature will increase in some sub-watersheds from loss of forest cover; however, this can be minimized by planting low growing woody vegetation along stream corridors.
- Tree removal and conversion of the area into an actively managed woodlot could have an impact on one state-listed plant specie. However, using best management practices for tree removal and protecting individual plants could minimize this. Maintaining the area as a woodlot will benefit the plant by opening the canopy.

Rehabilitation of Ziegler's Grove and the center of the Union's battle line along Cemetery Ridge necessitates the removal of the Cyclorama Building, which is listed on the National Register of Historic Places. In December 1998, NPS began consultations with the Advisory Council on Historic Preservation, the Pennsylvania Historic Preservation Officer, and interested

parties and individuals regarding the removal of the structure. On May 14, 1999, the Advisory Council on Historic Preservation concurred with the draft GMP/EIS' proposed restoration of the park's historic landscapes and the cyclorama painting, and the removal of the Cyclorama Building, finding that ''The rehabilitation of this key battlefield site so that the battlefield can properly be interpreted must be regarded as a historic mission of the highest order.'' A history of related actions is included on page 241 of the Final General Management Plan/ Environmental Impact Statement; the Advisory Council on Historic Preservation's Finding is included as Appendix 11. After that decision, NPS consulted with the Advisory Council, the Pennsylvania State Preservation Officer and interested parties to develop appropriate mitigation policies with regard to the removal of the Cyclorama Building and in accordance with the Memorandum of Agreement dated July 29, 1999.

Construction activities related to the relocation of the park's museum complex, visitor facilities and administrative facilities to a site removed from its prime resources have the potential to cause environmental harm. NPS will take the following actions to avoid or minimize harm resulting from these actions:

- Implementation of appropriate erosion control and revegetation measures will minimize short- and long-term disturbance and vegetation loss from construction activities for the new visitor facilities, administrative facilities, burial of utility lines, and other actions.
- Unknown archeological resources may be impacted by development activities and, if significant, the facilities will be relocated or the archeological resources could be excavated to salvage the artifacts. In addition, a monitoring and preservation program will allow archeologists to determine the nature of cumulative impacts, and devise avoidance or mitigation methods.
- Two small areas of historic rock walls may be destroyed to accommodate entrances to the new museum complex. NPS will consult with the Advisory Council and the State Historic Preservation Officer to develop appropriate mitigation policies with regard to the removal of these two sections of wall.
- Design of the new visitor or administrative facilities will seek to minimize topographic changes and keep as much of the new site in a natural condition as possible.
- Approximately 10 acres of prime farmland may be impacted by development; a Farm Conversion Impact Rating and Land Evaluation System Report will be completed before any work begins. Approximately 38 acres of meadow, orchard, and woodlands will be re-established at the sites of the old visitor centers to mitigate the removal of approximately 21–26 acres of hay and 8 acres of woods at the new museum and visitor center site.
- Up to 2 acres of wetlands could be impacted due to construction; however, a Wetlands Statement of Findings as required by Directors Order 77.1, will be completed prior to the initiation of work. In addition, up 100 acres of wetlands will be restored as a result of changes to the agriculture program and the removal of field drains in agricultural fields.
- Construction activities could temporarily displace or kill some individual wildlife or flora around the new visitor and administrative facilities. This will be mitigated through the park's inventorying and monitoring program to assure no sensitive species are being affected.
- Visitors might be temporarily inconvenienced by construction and relocation activities; however, construction and relocation will be scheduled to avoid the peak visitation periods.

Although overall visitor spending will increase due to the new museum complex, redistribution of visitor spending may occur because of the relocation of the museum complex. The anticipated increases in visitation, the increase in length of stay, the limitation of the menu and of the serving times in the food service facility, the routing of the park auto tour route through the Borough of Gettysburg, and the continued availability of information about community visitor facilities in the museum by the Visitor and Convention Bureau should help mitigate these impacts. To minimize development of new tourism related private development near the new museum site, NPS, either directly or through its various partners, will protect through easement or acquisition, lands that were significant to the outcome of the Battle.

Public and Interagency Involvement

NPS officially began the EIS process on May 5, 1997 with the publication in the **Federal Register** of a Notice of Intent to prepare a draft EIS. Scoping meetings were held to identify issues and concerns relating to the proposed general management plan. As a part of its scoping for the EIS, Gettysburg NMP requested public and agency review the park's legislative purposes, mission, and mission goals, developed as a part of NPS' compliance with the Government Performance and Results Act. NPS also held meetings to discuss its analysis of park resources, concepts for the park, and alternatives for the park. After NPS selected a proposal for negotiation for new museum and visitor facilities (as a result of the Draft Development Concept Plan and Environmental Assessment for Collections Storage, Museum and Visitor Facilities and subsequent RFP), it held additional meetings to review the details of the proposed facilities and their possible environmental consequences with the public. During Spring, 1998, NPS determined as a result of these meetings and other agency and public comment to combine the Draft Development Concept Plan and Environmental Assessment for Collections Storage, Museum and Visitor Facilities with the ongoing GMP/ EIS process. During this period, NPS also prepared and mailed five newsletters to interested agencies, organizations, and individuals. A Draft General Management Plan/ Environmental Impact Statement was developed and released to the public on August 14, 1998. Almost 3,800 copies of the Draft General Management Plan/ Environmental Impact Statement were distributed to agencies, organizations and the public. The Notice of Availability of the draft EIS was published in the **Federal Register** on August 18, 1998. Nine public meetings were held during the public comment period. Two workshops provided an overview of the entire GMP. Four workshops concentrated on a particular aspect of the plan, including resource preservation and rehabilitation, socioeconomic impacts, partnership issues including traffic, and interpretation and education. One meeting held by the Gettysburg NMP Advisory Commission, incorporated discussion on the GMP and the museum complex proposal. All seven of these meetings included question and answer sessions. NPS also held two formal public hearings to allow the public to comment on the plan. A listing of meetings, public workshops and hearings, and consultation activities is included in the Final General Management Plan/Environmental Impact Statement beginning on page 306.

The comment period on the draft ended October 17, 1998. Between October 1998 and May 1999 NPS met with local governments, members of Congress and representatives of state and local agencies and organizations to

ensure that their comments and concerns had been properly understood. Comments received through January 20, 1999 were included in the Final GMP/EIS.

NPS received over 500 oral or written comments on the draft GMP/EIS. Some comments concerned the relocation of the park's visitor centers to a nearby site. Some commentors, representing descendents of the more than 6500 men who fought where the Visitor Center and Cyclorama Building are now located, contended that appropriate restoration of the Ziegler's Grove area is necessary because of the approximately 970 soldiers who became casualties of the Battle of Gettysburg at that location. Others, many of whom operate businesses in close proximity to the park's visitor centers, are concerned that NPS' relocation of its visitor facilities would impact their businesses, either by changing pedestrian patterns or by removing parking from near their businesses.

NPS acknowledged in the draft GMP/EIS that despite the overall positive economic impact resulting from Alternative C, the selected action, the relocation of park visitor facilities might change visitor spending patterns and create indirect effects on area development or individual businesses. Because of comments received during scoping, NPS had included actions to mitigate possible effects in the draft GMP/EIS. These included: NPS partnership in the development of the Wills House; an NPS ranger presence in downtown; partnerships to strengthen the historic pathways pedestrian environment; expansion of NPS' auto tour to include resources within the Borough of Gettysburg; inclusion of a downtown/park shuttle; protecting sites within the park boundary and the Gettysburg Battlefield Historic District from inappropriate development; and continued promotion of local visitor services by the Visitor and Convention Bureau in the park visitor center. As a result of comments received on the draft GMP/EIS, NPS enhanced its discussion of the protection of Taneytown Road and Baltimore Pike, and included capital costs for the shuttle, which had inadvertently been left out of the draft GMP/EIS. Finally, NPS decided to provide parking to serve the Soldiers' National Cemetery near the existing parking lots and included this in the Final GMP/EIS.

Other commentors were concerned that the inclusion of a cafeteria-style restaurant, arts and crafts store and other retail activities originally proposed for inclusion in the museum complex would compete unfairly with local businesses. One of NPS' goals was to improve visitors' experiences in the museum complex by providing necessary and appropriate facilities that would enable them to extend their stay in the facility and properly use and enjoy the facility. During GMP scoping, NPS evaluated the proposal in relation to this goal, and determined what was necessary and appropriate to allow visitors to extend their stay in the facility and therefore in the community. Because of this scoping process, NPS reduced the size of the cafeteria-style restaurant and eliminated the arts and crafts store and other retail activities in the proposed new museum complex. These changes were described in the draft GMP/EIS.

However, even after making these changes in the draft GMP/EIS, NPS received comments about the food service facility during the public review of that document. After a review of the comments received on the draft GMP/EIS, NPS reevaluated its needs again and determined that it could further reduce the scope of the food service to be included in the facility and still meet its goal. NPS determined that limited food service would allow visitors to extend their stay and properly use and enjoy the facilities. Therefore, NPS decided to change the cafeteria-style restaurant to a limited food service facility, operating with a warming kitchen and providing snacks and light meals only. An economic assessment performed on this limited food service option found that food service expenditures within the park would decrease by 34% from the level predicted in the draft GMP/EIS, and that visitor expenditures outside the park would therefore increase by an estimated additional $495,000 per year, to a total of $24,278,900 annually. This represents an increase in visitor spending of 21.5% over current spending levels (Final GMP/EIS, pages 91–92, 282–286).

Some commentors feared that the new museum complex would commercialize the battlefield. However, NPS considers that the proposed collections storage, museum and visitor facilities do not commercialize the battlefield, but provide necessary and appropriate services to visitors that enhance the visitor experience and are entirely consistent with NPS policies, regulations and statutes. The existing visitor facilities at Gettysburg NMP include collections storage, a museum, a visitor center, the electric map, the cyclorama painting, a conventional theater in which NPS presents an education film, a licensed battlefield guide tour center, and the park's book and museum store. The new facility will continue these uses, providing enough space to make these operations more efficient. The new facility will also provide limited food service. The new facilities will allow NPS to provide superior orientation and interpretation, adequate protection for its collections, archives and the cyclorama painting, and will remove modern intrusions from the historic core of the battlefield.

Others were concerned that the inclusion of the museum proposal as a part of the GMP/EIS violated NPS policy or NEPA. However, after considering public and agency comment on the issue, NPS determined that it was in the public interest to combine the two ongoing public processes into the GMP/EIS. NPS considers that the environmental review procedures followed in this matter, including consideration of public comment as a part of the process, complied with NEPA.

Finally, some commentors are concerned that net removal of 576 acres of non-historic woodlands would create environmental impacts on local plant and animal communities and that rehabilitation of the battlefield was not necessary for proper interpretation of the battlefield. NPS determined that it could best meet its legislated purposes and mission, and provide a more meaningful visitor experience, by rehabilitating the battlefield in the manner described in the selected action. NPS acknowledged that removal of non-historic woodlands would have an impact on some forest species. However, with the exception of the black vulture, these species are widespread and the removal of non-historic woodlands would not affect their abundance or distribution. NPS considers that impacts upon the state-listed black vulture could be mitigated by the activities noted in the previous section. As noted above, the concomitant increase in meadow and pasture land will increase and improve open-land habitat and therefore the sensitive state-listed species that depend upon that habitat.

NPS responded to substantive comments in the final EIS, which was released to the public on June 18, 1999. NPS mailed approximately 586 copies of the two-volume document to agency, organizational and individual commentors. The Notice of Availability of the final EIS appeared in the **Federal Register** on June 25, 1999, and the Final General Management Plan/Environmental Impact Statement was made available for a 30-day no action period starting on that date.

In accordance with the Programmatic Agreement among the National Park

Service, the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers executed July 17, 1995, NPS has completed the consultation review steps related to general management planning (VI. C., D., and E.). NPS, the Pennsylvania State Historic Preservation Officer and the Advisory Council on Historic Preservation have negotiated and on July 28, 1999 signed a Programmatic Agreement. Implementation of this agreement will fulfill the NPS' responsibilities under section 106 of the National Historic Preservation Act.

Letters received from the Pennsylvania Natural Diversity Inventory of the Pennsylvania Department of Conservation and Natural Resources and the U.S. Fish and Wildlife Service are included as Appendix 7 of the Final General Management Plan/Environmental Impact Statement. These letters identified threatened, rare and endangered species and species of special concern protected by the respective agencies. There are no known Federal threatened, rare and endangered species within the park. Impacts to state listed species are either positive, or can be mitigated, as noted above.

The public and agency comments contained in the two volumes of the Final General Management Plan/Environmental Impact Statement and additional information available in the files at Gettysburg NMP headquarters provides valuable background for the context in which the proposed plan has been developed. All comments received on the Draft and Final General Management Plan/Environmental Impact Statement are on file at Gettysburg NMP headquarters in Gettysburg, Pennsylvania.

Dated: November 23, 1999.

John A. Latschun,

Regional Director, Northeast Regional Office.

[FR Doc. 99–32836 Filed 12–20–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Agency Information Collection Activities Under OMB Review

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review, comment, and approval. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before January 20, 2000.

ADDRESSES: Send comments regarding the information collection to the following addresses: Mr. Larry Schluntz, Bureau of Reclamation, Reclamation Law and Revenues Office, D–5200, P.O. Box 25007, Denver, CO 80225, and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior, 725 17th Street, NW, Washington, DC 20503.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from pubic disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. 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 disclosure in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the forms contact Larry Schluntz, Bureau of Reclamation, P.O. Box 25007, Denver, CO 80225; telephone: (303) 445–2901.

SUPPLEMENTARY INFORMATION:

Title: Crop Acreage and Yields and Water Distribution (OMB Control No. 1006–0001). This is a request for a reinstatement of a previous data collection with changes. The titles of the forms and the form numbers associated with this information collection are: Form 7–332, Water User Crop Census Report, and Form 7–2045, Crop and Water Data. Since this is a request for reinstatement of a previously approved collection of information, the Bureau of Reclamation (Reclamation) decided it would be less confusing for the public to use the earlier titles for these forms.

Abstract: The annual crop census is taken on all Bureau of Reclamation (Reclamation) projects, along with collection of related statistics, primarily for use as a tool in administering, managing, and evaluating the Federal reclamation program. The census is used to assist in the administration of repayment and water service contracts which are used to repay the irrigators obligation to the Federal Government. Data from the census also are utilized to determine Class 1 equivalency computations, *i.e.,* determining the number of acres of Class 2 and 3 land that are required to be equivalent in productivity to Class 1 land. Crop production data are also used to analyze the double subsidy occurring on Reclamation project lands. Double subsidies occur when an irrigator receives interest-free irrigation water and is also eligible for farm program payments from the U.S. Department of Agriculture. In recent years, the census has provided data which are used to administer international trade agreements, such as the North American Free Trade Agreement. Data from the census are also used by the Office of the Inspector General, General Accounting Office, and the Congressional Research Service to independently evaluate the Reclamation program and to estimate the impacts of proposed legislation. These data are also supplied to other Federal and State agencies to evaluate the program and provide data for research. The census will provide data to provide the required 5-year review of ability-to-pay analysis which is being incorporated into new repayment and water service contracts. The basis for these reviews is an audit by the Office of the Inspector General, Department of the Interior.

Burden: The respondent burden is estimated at 6,250 hours for farmers and 1,800 for irrigation districts. These estimates are derived as follows. There are an estimated 50,000 farm operators in the sampling universe and if a 50 percent sampling rate is assumed there will be 25,000 respondents in any given year. It is estimated that each respondent will require 15 minutes to complete the form. In most cases, the individual irrigators will have the requested data of crop production and yields in their own records and it only takes a few minutes to transfer these data to the respondent form. This yields an estimated 6,250 hours. In addition, the irrigation districts compile the individual responses into a district-wide response which is submitted to Reclamation. It is estimated that each of the 225 districts will require 8 hours to complete this compilation, which is a total of 1,800 burden hours for the districts. The overall total is estimated at 8,050 burden hours.

Respondents/Affected entities: Irrigators who receive irrigation water from Bureau of Reclamation projects and irrigation districts.

Estimated number of respondents: Estimated 50,000 irrigators in the universe; reporting burden estimate based on a 50 percent sample or 25,000 respondents annually. Approximately 225 districts will consolidate the respondent data and provide a summarized report annually to Reclamation.

Estimated total annual burden on respondents: 6,250 hours for irrigators and 1,800 hours for irrigation districts.

Frequency of Collection: Annually.

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. Reclamation will display a valid OMB control number on the survey forms. A **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published in the **Federal Register** (63 FR 10243, Mar. 2, 1998). Reclamation did not receive any comments on this collection of information during the comment period.

Comments

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) The accuracy of our burden estimate for the proposed collection of information;

(c) Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comment should be submitted to OMB within 30 days in order to assure maximize consideration.

Murlin Coffey,

Manager, Property and Office Services.

[FR Doc. 99–32981 Filed 12–20–99; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Office of the Special Trustee for American Indians

[Docket No. FR99N–0002]

Notice of Agency Information Collection: Proposed Collection; Comment Request; Direct Deposit Trust Funds Form

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces OST's plan to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Direct Deposit Trust Funds Form. Before submitting the ICR to OMB for review and approval, OST is soliciting comments on specific aspects of the proposed information collection as described below. An agency may not conduct or sponsor a collection of information and a person is not required to respond unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before February 22, 2000.

ADDRESSES: Send or hand deliver comments to Sarah Yepa, Office of Trust Funds Management, Office of Special Trustee for American Indians, 505 Marquette, NW, Albuquerque, New Mexico 87102.

FOR FURTHER INFORMATION CONTACT: Alley David, Liaison Officer, Branch of Directives and Regulatory Management Liaison Officer, at the above address. Telephone (505) 248–5751, Fax (505) 248–5782, or e-mail at *alley.david@ios.doi.gov.*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are Individual Indian Monies (IIM) account holders.

Title: Direct Deposit Trust Funds Form.

I. Background

The Debt Collection Improvement Act of 1996 requires, with few exceptions, that all Federal payments be made by automated clearinghouse (ACH). Although individual compliance to the Act is voluntary, the Secretary of the Interior, as the designated trustee for funds held by the Federal government on behalf of individual Indians, is encouraging the use of direct deposit by IIM account holders.

The information being requested will enable the Secretary to deposit IIM funds into an account at a bank by ACH rather than issue a check to the account holder. Response to the collection of information by the account holder is, however, voluntary. Conditions of disclosure are in accordance with provisions contained in the Privacy Act of 1974, as amended.

II. Benefits of Using Direct Deposit

(1) Possibility of checks being lost in the mail or stolen is eliminated.

(2) IIM funds are available sooner than if the mail service is used because they are electronically sent to the bank.

(3) If your bank account is an interest-earning account, your IIM funds begin earning interest sooner because the funds are in the bank within one or two days of the payment date.

(4) A notice of payment is sent whenever a deposit is made to the account.

(5) It's less expensive and more efficient.

III. Request for Comments

The OST is soliciting comments to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

IV. Burden Statement

The estimated total reporting burden is 12,750 hours over a 3-year period. The estimated burden hour per respondent is .25 hours. The estimated number of respondents is 51,000. 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 for reviewing instructions; developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjusting existing ways to comply with any

previously applicable instructions and requirements; training personnel to be able to respond to a collection of information; searching data sources; completing and reviewing the collection of information; and transmitting or otherwise disclosing the information.

Donna Erwin,

Director, Office of Trust Funds Management.

[FR Doc. 99–32897 Filed 12–20–99; 8:45 am]

BILLING CODE 4310–2W–U

DEPARTMENT OF THE INTERIOR

Office of the Special Trustee for American Indians

[Docket No. FR99N–0001]

Notice of Proposed Information Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) The Office of the Special Trustee for American Indians (OST) announces a request for public comment from Indian Tribes concerning the renewal of Information Collection authorization. We will be submitting a request to the Office of Management and Budget to extend authorization for OMB Control Nos. 1035–0001, 1035–0002, and 1035–0003. The information collection allows us to collect documents associated with tribes withdrawing their funds held in trust and applying for technical assistance to withdraw funds under 25 CFR 1200.

Request for Comments

You may send or deliver comments to the addressee in the **ADDRESSES** section below. Please put the document number on your comments found in brackets in the heading of this notice. Your comments will be summarized and included in the request to OMB for approval and will become public record. We solicit your specific comments as to:

(1) Whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information has practical usefulness.

(2) Whether the accuracy of our burden estimate of the collection of information, including the validity of the methodology and assumptions used is reasonable.

(3) Enhance the quality, utility and clarity of the information to be collected.

(4) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

DATES: You must send your comments so they are received on or by February 22, 2000.

ADDRESSES: You may mail or hand deliver your comments to: Sarah Yepa, Office of Trust Funds Management, Office of the Special Trustee for American Indians, 505 Marquette, NW, Suite 1000, Albuquerque New Mexico 87102.

FOR FURTHER INFORMATION CONTACT: Alley David, Branch of Directives and Regulatory Management, at (505) 248–5751, Fax (505) 248–5782, or electronically at *alley.david@ios.doi.gov.*

SUPPLEMENTARY INFORMATION: The American Indian Trust Fund Management Reform Act of 1994 (the Reform Act) allows tribes to withdraw their money held in trust by the U.S. Government. To withdraw their money, tribes must first submit an application and get approval from the Secretary of the Interior. The Reform Act also allows tribes to apply for technical assistance and financial assistance to complete the application. Financial assistance may not always be available. Section 1200.13 tells tribes how to submit an application to withdraw their money and Sec. 1200.14 tells them how they can apply for technical and financial assistance.

Burden Statement

The current information collection authorizations expire December 31, 1999. A Federal 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 application forms and burden estimates are:

1. OMB No. 1035–0001, OST Form No. SF–424A, Application for Technical Assistance to Withdraw Tribal Funds from Trust Status (Specific Budget):
   Estimate Burden Hours—468
   Annual Respondents—12
   Estimate Burden Per Response—39
2. OMB No. 1035–0002, OST Form No. SF–424, Application for Technical Assistance to Withdraw Tribal Funds from Trust Status (General):
   Estimate Burden Hours—156
   Annual Respondents—12
   Estimate Burden Per Response—13
3. OMB No. 1035–0003, Application to Withdraw Tribal Funds from Trust Status:
   Estimate Burden Hours—4,104
   Annual Respondents—12
   Estimate Burden Per Response—342
   Total Burden Hours for all Information Collections—4,728

Burden means the total time, effort, or financial resources expended to disclose or provide information to a federal agency and includes the time needed to review instructions, gather, process and submit the information.

Donna Erwin,

Director, Office of Trust Funds Management.

[FR Doc. 99–32898 Filed 12–20–99; 8:45 am]

BILLING CODE 4310–2W–U

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. AA1921–197 (Review); 701–TA–231, 319–320, 322, 325–328, 340, 342, and 348–350 (Review); and 731–TA–573–576, 578, 582–587, 604, 607–608, 612, and 614–618 (Review)]

Certain Carbon Steel Products From Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determinations to conduct full five-year reviews concerning the countervailing duty and antidumping duty orders on certain carbon steel products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and United Kingdom.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the countervailing duty and antidumping duty orders on certain carbon steel products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and United Kingdom would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B); a schedule for the reviews will be established and announced at a later date.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules

of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: December 3, 1999.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On December 3, 1999, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group responses to its notice of institution (64 FR 47862, September 1, 1999) were adequate with respect to all reviews, and that the respondent interested party group responses were adequate with respect to Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Netherlands, Romania, Spain, and United Kingdom but inadequate with respect to Australia, Poland, Sweden, and Taiwan. The Commission also found that other circumstances warranted conducting full reviews with respect to Australia, Poland, Sweden, and Taiwan.

A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: December 14, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–32935 Filed 12–20–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–409]

Certain CD–ROM Controllers and Products Containing The Same—II; Denial of Motion for Sanctions; Vacatur of Recommended Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to deny respondents' motion for monetary sanctions and to vacate the presiding administrative law judge's (''ALJ'') recommended determination (''RD'') on monetary sanctions in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202–205–3152. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 13, 1998, based on a complaint filed by Oak Technology, Inc. (''Oak''). The respondents named in the investigation are MediaTek, Inc., United Microelectronics Corp., Lite-On Technology Corp., and AOpen, Inc. On May 12, 1999, the ALJ issued his final initial determination (''ID'') finding the patent in controversy invalid, unenforceable, not infringed, and that there was no violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).

On January 13, 1999, respondents filed a motion for monetary sanctions against complainant Oak and its litigation counsel, Howrey & Simon (''Howrey''). On August 10, 1999, the ALJ issued an RD which recommended that sanctions be imposed on Oak and Howrey, jointly and severally, for an amount equal to respondents' reasonable attorney fees and costs in the investigation. The ALJ found that Oak and Howrey had abused Commission process by filing a section 337 complaint it knew was based on a patent that was invalid and unenforceable, in violation of section 210.4(d) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(d)).

On August 18, 1999, Oak and Howrey filed a motion to delay issuance of the public version of the RD imposing sanctions against Oak and Howrey. On August 31, 1999, the ALJ issued Order No. 18 denying Oak and Howrey's motion to delay issuance of the public version of the RD. On September 8, 1999, the Commission issued an order delaying issuance of the public version of the sanctions RD until issuance of the public version of the Commission opinion on whether there is a violation of section 337 in this investigation. The deadline for the parties to file comments on the RD was extended until 14 days after issuance of the public version of the Commission opinion on violation of section 337. All parties filed comments on the RD.

On October 1, 1999, the Commission affirmed the ID's finding of no infringement, but reversed the ID's findings of invalidity and unenforceability, and therefore determined there was no violation of section 337 in the investigation.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.25 of the Commission's Rules of Practice and Procedure (19 CFR 210.25).

Copies of the Commission's order and all other nonconfidential documents in the record of this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202–205–2000.

By order of the Commission.

Issued: December 13, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–32934 Filed 12–20–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–859 (Preliminary)]

Circular Seamless Stainless Steel Hollow Products From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan of circular seamless stainless steel hollow products, provided for in subheadings 7304.10.50, 7304.41.30, 7304.41.60, and 7304.49.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

This investigation results from a petition filed on behalf of Altx, Inc., Watervliet, NY; American Extruded Products, PMAC Ltd., Beaver Falls, PA; DMV Stainless USA, Inc., Houston, TX; Salem Tube, Inc., Greenville, PA; Sandvik Steel Co., Scranton, PA; International Extruded Products LLC d/b/a Wyman-Gordon Energy Products—IXP Buffalo, Buffalo, NY; and the United Steelworkers of America, AFL-CIO/CLC, Pittsburgh, PA, on October 26, 1999, alleging that an industry in the United States is materially injured and threatened with material injury by reason of less-than-fair-value imports of circular seamless stainless steel hollow products from Japan. Accordingly, effective October 26, 1999, the Commission instituted antidumping duty investigation No. 731–TA–859 (Preliminary). The Commission received an amendment to the petition on November 9, 1999, in which Pennsylvania Extruded Tube Co. joined as a co-petitioner in the case.

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 4, 1999 (64 FR 60223). The conference was held in Washington, DC, on November 16, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 10, 1999. The views of the Commission are contained in USITC Publication 3262 (December 1999), entitled Circular Seamless Stainless Steel Hollow Products from Japan: Investigation No. 731–TA–859 (Preliminary).

Issued: December 13, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–32933 Filed 12–20–99; 8:45 am]

BILLING CODE 7020–02–P

[2] Commissioner Crawford not participating.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 751–TA–15]

Stainless Steel Plate From Sweden

AGENCY: United States International Trade Commission.

ACTION: Termination of changed circumstances review.

SUMMARY: On August 6, 1999, the Department of Commerce published notice of the revocation of the antidumping finding on stainless steel plate from Sweden (64 FR 42922). The revocation of the antidumping finding renders moot the Commission's suspended changed circumstances review on stainless steel plate from Sweden (investigation No. 751–TA–15). Accordingly, the Commission hereby gives notice that it is terminating changed circumstances review investigation No. 751–TA–15.

EFFECTIVE DATE: December 13, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter (202–205–3172), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On June 30, 1993, the Commission self-initiated a changed circumstances review of its 1973 affirmative determination in *Stainless Steel Plate from Sweden,* Inv. No. AA1921–114, TC Pub. 573 (May 1973). The decision to initiate the review followed discovery of a 1976 Treasury scope ruling that excluded three specific products from the scope of the original antidumping finding covering stainless steel plate from Sweden. The Commission determined that exclusion of these three products from the scope of the finding constituted changed circumstances sufficient to warrant review of its determination. Following publication of the notice of institution of the review, the domestic industry and the Swedish producer Avesta requested that the Commission suspend the review until the Department of Commerce could resolve an ongoing scope inquiry covering the same products. On August 16, 1993, the Commission suspended the review. The review has remained suspended since that date during Commerce's scope proceeding and subsequent appellate litigation.

On August 3, 1998, the Commission instituted a review of the finding under 19 U.S.C. 1675(c) to determine whether revocation of the antidumping finding covering stainless steel plate from Sweden would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (63 FR 41288, August 3, 1998). On June 23, 1999, the Commission determined that revocation of the antidumping finding covering stainless steel plate from Sweden would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *Stainless Steel Plate from Sweden,* Inv. No. AA1921–114 (Review), USITC Pub. 3204 (July 1999). Accordingly, on August 6, 1999, the Department of Commerce published notice of the revocation of the antidumping finding

covering stainless steel plate from Sweden (64 FR 42922).

Revocation of the antidumping finding covering stainless steel plate from Sweden renders moot the need for the suspended changed circumstances review of the finding. Therefore, in accordance with the provisions of 19 CFR 207.40 and 207.45(d), the Commission has determined to terminate the suspended changed circumstances proceeding.

Authority: This review is being terminated under authority of title VII of the Tariff Act of 1930.

By order of the Commission.

Issued: December 14, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–32937 Filed 12–20–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–860 (Preliminary)]

Tin- and Chromium-Coated Steel Sheet From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan of tin- and chromium-coated steel sheet (as defined by the Department of Commerce (Commerce)), that are alleged to be sold in the United States at less than fair value (LTFV).

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules upon notice from Commerce of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On October 28, 1999, a petition was filed with the Commission and Commerce by Weirton Steel Corp., Weirton, WV; the United Steelworkers of America (USW), AFL-CIO; and the Independent Steelworkers Union (ISU), alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of tin- and chromium-coated steel sheet from Japan. Accordingly, effective October 28, 1999, the Commission instituted antidumping investigation No. 731–TA–860 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 4, 1999 (64 FR 60225). The conference was held in Washington, DC, on November 18, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 13, 1999. The views of the Commission are contained in USITC Publication 3264 (December 1999), entitled ''Tin- and Chromium-Coated Steel Sheet from Japan: Investigation No. 731–TA–860 (Preliminary).''

By order of the Commission.

Issued: December 15, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–32938 Filed 12–20–99; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Crawford not participating.

INTERNATIONAL TRADE COMMISSION

[Investigation 332–408]

Database on Trade and Investment in Services, Part II

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

EFFECTIVE DATE: December 13, 1999.

SUMMARY: Following receipt of a request dated November 22, 1999, from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–408, Database on Trade and Investment in Services, Part II, under section 332(g) of the Tariff Act of 1930 (19 U.S. C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: Information specific to this investigation may be obtained from Mr. Richard Brown, Office of Industries (202–205–3438) or Ms. Tsedale Assefa, Office of Industries (202–205–2374). For information on the legal aspects of this investigation, contact Mr. William Gearhart of the Office of the General Counsel (202–205–3091). The media should contact Ms. Margaret O'Laughlin, Office of External Relations (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810). General information concerning the Commission may be obtained by accessing its Internet server (http://www.usitc.gov).

Background:

Article 19 of the General Agreement on Trade in Services (GATS) requires World Trade Organization (WTO) members to enter into successive negotiations beginning not later than January 1, 2000, with a view to achieving progressively higher levels of liberalization in services trade and investment. In preparing for such negotiations, the USTR has asked the Commission to develop a confidential database that provides up-to-date information on service markets in other WTO member countries. As requested by the USTR, the Commission, pursuant to section 332(g) of the Tariff Act of 1930, instituted an investigation for the purpose of developing a confidential database of information on trade and investment in 62 foreign service markets. The Commission will develop a database that provides, to the extent available, the following information with respect to six service industries:

(1) Current market access and national treatment restrictions to foreign service providers;

(2) Liberalization and deregulation that has taken place since 1995 (or since 1997 for financial services);

(3) Contemplated services liberalization or deregulation; and

(4) Sector-specific preferences extended to third-country trading partners.

The industries identified by USTR include health related and social services (defined as hospital, clinic, outpatient facility, nursing home, assisted living services, but excluding such services when publicly provided); education and training services (defined as higher education services, adult education services, and other education services, and training services in traditional and non-traditional settings, but excluding such services when publicly provided); travel and tourism services (defined as lodging, food serving services including restaurants, travel agency, tour operator, and tourist guide services); insurance services (defined as direct insurance and co-insurance, including life and non-life insurance services; reinsurance and retrocession; insurance intermediation, such as brokerage and agency; and services auxiliary to insurance including consultancy, actuarial, risk assessment and claim settlement); banking, securities, and other financial services (defined as deposit taking, lending, leasing, payment and transmission services, trading of securities and all other financial assets, securities underwriting and related services, asset management, clearance and settlement, and financial information and advisory services); and computer and related services (defined as data processing services, database services, software implementation services, and consultancy services related to the installation and maintenance of computer hardware and software). In addition, the Commission will attempt to identify common approaches, if any, to the deregulation and liberalization of service markets among WTO members. The USTR requested that the Commission provide the database no later than May 26, 2000. USTR indicated that the database will be confidential for a period of 10 years. USTR also noted that it considers the Commission's database to be an interagency memorandum that will contain predecisional advice and be subject to the deliberative process privilege. This investigation follows a previous request for a confidential database (Inv. No. 332–397) that was provided to the USTR on April 30, 1999. That database focused on distribution services (defined as wholesaling, retailing, and franchising), telecommunication services, express delivery services, entertainment technology services, foreign legal consultancy services, accounting services, architectural services, engineering services, construction services, energy services (defined as mining, oil, gas, and electricity), and environmental services. The Commission also provided information with respect to temporary entry and stay of service providers. In addition, the Commission sought to identify, to the extent available, common approaches to the deregulation and liberalization of service markets among WTO members, and best prospects for services trade liberalization during the impending WTO negotiations.

By order of the Commission.

Issued: December 14, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–32936 Filed 12–20–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive, Environmental Response, Compensation and Liability Act (''CERCLA'')

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in Civil Action No. 99–2673–Civ–T–24B was lodged with the United States District Court for the Middle District of Florida on November 23, 1999.

In this action the United States sought injunctive relief and recovery of response costs under sections 106(a) and 107 of CERCLA, 42 U.S.C. 9606(a) and 9607, with respect to the Stauffer Chemical Superfund Site in Tarpon Springs, Florida (''the Site'').

Under a proposed Consent Decree, Atkemix Thirty-Seven, Inc., the present owner and operator of the Site, and Rhone-Poulenc Ag Company, Inc., the former owner and operator of the Site, have agreed to perform the remedy chosen by EPA to clean up the Site, pay the government's remaining past response costs, and pay future response costs, in settlement of the government's claims under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Atkemix Thirty-Seven, Inc., Rhone-Poulenc Ag. Company, Inc.,* (M.D. F1.), DOJ # 90–11–2–1227/1.

The proposed consent decree may be examined at the Office of the United States Attorney, 400 North Tampa Street, Suite 3200, Tampa, Florida 33602; the Region 4 Office of the Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303, and at the Consent Decree Library, Post Office Box 7611, Washington, D.C. 20044–7611, (202) 514–1547. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, Post Office Box 7611, Washington, DC 20044–7611. In requesting a copy please refer to the referenced case and enclose a check in the amount of 25 cents per page for reproduction costs, payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–32976 Filed 12–20–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

Notice is hereby given that a proposed consent decree in *United States* v. *Cumberland Farms, Inc.,* Civil Action No. 3:98CV2226 (AVC), was lodged on October 1, 1999, in the United States District Court for the District of Connecticut. The proposed consent decree will resolve the United States' Clean Air Act, 42 U.S.C. 7401 *et seq.* (''the Act''), claims alleged in a complaint against Cumberland Farms for violations of the Act at a bulk gasoline terminal it previously owned and operated in New Haven, Connecticut.

Pursuant to the consent decree, Cumberland Farms will pay a civil penalty in the amount of $40,000. The decree further requires Cumberland Farms to perform two supplemental environmental projects.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v.

Cumberland Farms, Inc., DOJ Ref. #90–5–2–1–06457.

The proposed consent decree may be examined at the office of the United States Attorney for the District of Connecticut, 450 Main St., Hartford, Conn. 06103; and at the Region I office of the Environmental Protection Agency, 1 Congress St., Boston, Mass. 02114–2023. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044. When requesting a copy please refer to the referenced case and enclose a check made payable to the Consent Decree Library in the amount of $6.25 (25 cents per page reproduction costs).

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–32977 Filed 12–20–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Consent Judgments Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby govern that a proposed Consent Decree in *United States* v. *Exxon Corporation, et al.,* DOJ # 90–11–2–201, Civ No. C–92–486, was lodged in the United States District Court for the District of New Hampshire on December 8, 1999. The Consent Decree resolves claims of the United States under Sections 106(b) and 107(a) and (c) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9606(b) and 9607(a) and (c), against four defendants and twenty-seven (27) third-party defendants (''Settling Defendants'') relating to cost reimbursement and cleanup of the Auburn Road Landfill Superfund Site in Londonderry, New Hampshire (the ''Site''). The direct defendants are Exxon Corporation, Grassy Knoll Associates, Peter Johnson, and Workplace Systems Corporation. Under the proposed Consent Decree, the Settling Defendants agree, inter alia, to reimburse to the United States $5.84 million in past response costs incurred at the Site, to perform future Work at the Site under EPA's 1989 Record of Decision as amended by EPA's 1996 Amended Record of Decision, and to pay EPA's oversight costs incurred in connection with that Work. The Work involves operation and maintenance of the landfill cap, monitoring of ground water, surface water and sediments under a natural attenuation remedy, and the performance of any active remediation of ground water, surface water and sediments that EPA may select in the future. Also, Peter Johnson/Grassy Knoll will pay $100,000, and Workplace Systems Corporation will pay $25,000 and perform a supplemental environmental project, to resolve our claims for civil penalties/punitive damages concerning their alleged violations of a unilateral administrative order issued by EPA in 1990 (''1990 UAO'').

Additionally, under the proposed Decree, Settling Defendants will reimburse the State for a portion of its past response costs and will reimburse the Town of Londonderry, New Hampshire for a portion of its response costs. Further, Peter Johnson agrees to convey to the Town of Londonberry certain property at the Site, subject to use restrictions. In return, the United States covenants not to sue Settling Defendants for response costs or response actions at the Site, subject to certain reopeners and reservations of rights. The United States also covenants not to sue Peter Johnson and Workplace Systems for civil penalties and punitive damages for their violations of the 1990 UAO. Only three third-party defendants are not participating in the settlement.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Exxon Corporation, et al.,* DOJ # 90–11–2–201. The proposed Consent Decree may be examined at the Office of the United States Attorney, District of New Hampshire, 55 Pleasant Street—Room 312, Concord, New Hampshire 03301; and at the Region I Office of the U.S. Environmental Protection Agency, One Congress Street, Suite 1100—RCA, Boston, Massachusetts 02114–2023. Copies of the Consent Decree may be obtained by mail from the Justice Department Consent Decree Library, P.O. Box 7611 Ben Franklin Station, Washington, DC 20044, (202) 514–1547. In requesting a copy, please enclose a check in the amount of $170.00 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Joel M. Gross,

Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–32975 Filed 12–20–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 181–99]

Privacy Act of 1974; System of Records

The Department of Justice, United States Attorneys' Offices proposes to modify the United States Attorneys Offices Criminal Case File System, Justice/USA–007, last published separately on January 22, 1988 at 53 FR 1861 and published as modified on January 20, 1998 at 63 FR 8659, 8669. The primary purpose of this system is to facilitate a uniform system of record keeping related to criminal litigation and prosecutions and ancillary civil matters arising from criminal cases handled by the United States Attorneys Offices. The Department now proposes to modify the system by adding one new routine use.

New routine use (w) will enable the United States Attorneys Offices to better inform victims of crimes of the status of the investigation, the disposition of the case in which they were a victim or a complainant, and the status of the defendant if convicted.

5 U.S.C. 552a(e) (4) and (11) provide that the public be given thirty days in which to comment on these proposed changes. Comments must be submitted in writing to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington DC 20530 by January 20, 2000.

As required by 5 U.S.C. 552a(r) and the Office of Management and Budget (OMB) implementing regulations, the Department of Justice has provided a report on the proposed changes to OMB and the Congress.

A modified system description is set forth below.

Dated: December 14, 1999.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/USA–007

SYSTEM NAME:

Criminal Case Files.

SYSTEM LOCATION:

Ninety-four United States Attorneys' Offices (see Appendix identified as

Justice/USA–999); the Executive Office for United States Attorneys, United States Department of Justice, 10th and Constitution Avenue, N.W. Washington D.C. 20530; and posted on the internet website of the EOUSA at http://www.usdoj.gov/eousa.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(w) Information may be disclosed to complainants and victims to the extent necessary to provide them with information concerning the progress or results of the imvestigation or case arising from the matters of which they complained or were the victim.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

System manager for the system in each office is the Administrative Office/Assistant, for the U.S. Attorney for each district (see appendix or EOUSA internet address http://www.usdoj.gov/eous).

NOTIFICATION PROCEDURE:

Address inquiries to the system manager for the judicial district in which the case or matter is pending. (See appendix or EOUSA internet address of http://www.usdoj.gov/eousa).

* * * * *

[FR Doc. 99–32941 Filed 12–20–99; 8:45 am]

BILLING CODE 4410–AR–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—''Development of Training Curriculum for Delivery of Executive Training to Newly Appointed Wardens''

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Solicitation for a Cooperative Agreement.

SUMMARY: This cooperative agreement is made available for the development of a core curriculum for the training of newly appointed prison wardens/superintendents. The award recipient will develop a 32-hour training curriculum including an instructors' guide, lesson plans, computer-generated view graphs to support the curriculum, and a participant manual. The curriculum will provide persons with prison management and operations experience with training materials and delivery strategies for state-of-the-art executive training of wardens/superintendents from multiple state, major municipal, and territorial corrections agencies who are in their initial year of service in this position. The award recipient will also develop an outcome evaluation instrument for retrospective application with those participating in the training, their superiors, peers or others.

Funds Available: The award will be limited to $100,000 (direct and indirect costs) and project activity must be completed within 12 months of the date of award. Funds may not be used for construction, or to acquire or build real property. This project will be a collaborative venture with the NIC Prisons Division.

Deadline for Receipt of Applications: Applications must be received by 4:00 p.m. on Wednesday, January 19, 2000, 4:00 p.m. Eastern daylight time. They should be addressed to: National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534. Hand delivered applications should be brought to 500 First Street, NW, Washington, DC 20534. The front desk will call Bobbi Tinsley at (202) 307–3106, extension 0 for pickup.

ADDRESSES AND FURTHER INFORMATION: Request for the application kit, which includes further details on the project's objectives, etc., should be directed to Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534 or by calling 800–995–6423, ext. 159, 202–307–3106, ext. 159, or email: jevens@bop.gov. A copy of this announcement, application forms, and additional information may also be obtained through the NIC web site: http.www.nicic.org (click on ''What's New'' and ''Cooperative Agreements''). All technical and/or programmatic questions concerning this announcement should be directed to Dick Franklin at the above address or by calling 800–995–6423 or 202–307–1300, etc. 145, or by E-mail via rfranklin@bop.gov.

Eligibility Applicants: An eligible applicant is any state or general unit of local government, public or private agency, educational institution, organization team, or individual with the requisite skills to successfully meet the outcome objectives of the project.

Review Considerations: Applications received under this announcement will be subjected to an NIC 3 to 5 member Peer Review Process.

Number of Awards: One (1)

NIC Application Number: 00P08 This number should appear as a reference line in your cover letter and also in box 111 of Standard Form 424.

Catalog of Federal Domestic Assistance Number: 16.601.

Authority: Public Law 93–415.

Dated: December 9, 1999.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 99–32974 Filed 12–20–99; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 15, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096, ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OHSA, and VETS contact Darrin King ((202) 219–5096, ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Title: Requirements of a Bona Fide Thrift or Savings Plan (29 CFR part 547) and Requirements of a Bona Fide Profit sharing Plan or Trust (29 CFR part 549).

OMB Number: 1215–0119.

Frequency: Recordkeeping only.

Affected Public: Business or other for-profit; Individuals or households; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 1.924 million.

Total Burden Hours: (Recordkeeping) 2.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: This information collection requests clearance of the recordkeeping provisions of section 7(e)(3)(b), of the Fair Labor Standards Act, which permits the exclusion from an employee's regular rate of pay, payments on behalf of an employee to a bona fide thrift or savings plan, profit-sharing plan or trust. The implementing Regulations 29 CFR parts 547 and 549 set forth the requirements for a bona fide thrift or savings plan, profit-sharing plan, or trust.

Agency: Employment Standards Administration.

Title: Request to Be Selected As Payee.

OMB Number: 1215–0166.

Agency Form Number: CM–910.

Frequency: One time.

Affected Public: Individuals or households; Businesses or other for-profit; Not-for-profit institutions; State, Local or Tribal government.

Number of Respondents: 2,350.

Estimated Time Per Respondent: 20 minutes.

Total Burden Hours: 783.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $846.

Description: The CM–910 is used to obtain information about prospective representative payees to determine whether they are qualified to handle monetary benefits on behalf of the Black Lung beneficiary.

Agency: Occupational Safety and Health Administration.

Title: Vinyl Chloride (29 CFR 1910.1017).

OMB Number: 1218–0010 (Extension).

Frequency: On occasion.

Affected Public: Business or other for-profit; Federal, State, Local or Tribal Government.

Number of Respondents: 80.

Estimated Time Per Respondent: time for response ranges from approximately 5 minutes for employers to maintain employee exposure monitoring and medical records to 10 hours for employers to provide reports of vinyl chloride emergencies and incidents to the nearest OSHA area office.

Total Burden Hours: 2,978 hours.

Total Annualized capital/startup: $0.

Total annual costs (operating/maintaining systems or purchasing services): $258,042.

Description: The Vinyl Chloride Standard requires employers to monitor employee exposure to vinyl chloride, to monitor employee health, and to provide employees with information about their exposures and the health effects of exposure to vinyl chloride. In addition, employers must notify OSHA area directors of regulated areas and changes to regulated areas, and of any emergencies that involve vinyl chloride.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–32986 Filed 12–20–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,216]

Camp-Hill Corporation, McKeesport, Pennsylvania; Notice of Revised Determination on Reconsideration

On May 20, 1999, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on June 3, 1999 (64 FR 29891).

The Department initially denied TAA to workers of Camp-Hill Corporation, McKeesport, Pennsylvania, producing electric resistance welded (ERW) carbon and alloy pipe because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met.

On reconsideration, the Department conducted a customer survey of the sole customer's customers of electric resistance welded (ERW) carbon and alloy pipe. The survey revealed that some of the sole customer's customers were increasing their reliance on imports of electric resistance welded (ERW) carbon and alloy pipe while reducing purchases from the sole customer.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with electric resistance welded (ERW) carbon and alloy pipe contributed importantly to the declines in sales or production and to the total or partial separation of workers of Camp-Hill Corporation, McKeesport, Pennsylvania. In accordance with the provisions of the Act, I make the following certification:

All workers of Camp-Hill Corporation, McKeesport, Pennsylvania engaged in the production of electric resistance welded (ERW) carbon and alloy pipe who became totally or partially separated from employment on or after October 30, 1997 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 30th day of November 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–32994 Filed 12–20–99; 8:45 am]

BILLING CODE: 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,695]

Energizer Power Systems; Eveready Battery Company Now Known as Moltech Power Systems, Gainesville, FL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the U.S. Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 28, 1998 applicable to all workers of Energizer Power Systems located in Gainesville, Florida. The notice was published in the **Federal Register** on September 28, 1998 (63 FR 51605). The determination was amended on September 29, 1998 to include workers whose wages were reported under its parent firm, Eveready Battery Company. The amended notice was published in the **Federal Register** on October 9, 1998 (63 FR 54497).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production

of rechargeable batteries. Company information shows that in November 1999, the Energizer Power Systems, Division of Eveready Battery Company, was purchased by Moltech Corporation. The Gainesville, Florida location of Energizer Power Systems became known as Moltech Power Systems and will continue to lay off workers.

Accordingly, the Department is amending the certification determination to correctly identify the new ownership to read ''Energizer Power Systems, Division of Eveready Battery Company, now known as Moltech Power Systems,'' Gainesville, Florida.

The intent of the Department's certification is to include all workers of Energizer Power Systems who were adversely affected by increased imports of rechargeable batteries.

The amended notice applicable to TA–W–34,695 is hereby issued as follows:

All workers of Energizer Power Systems, now known as Moltech Power Systems, Gainesville, Florida who became totally or partially separated from employment on or after June 12, 1997 through August 28, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC this 30th day of November, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33001 Filed 12–20–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,687]

Fashions Apparel, Inc., El Paso, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 16, 1999, in response to a petition filed on the same date on behalf of workers at Fashions Apparel, Inc., El Paso, Texas.

A certification applicable to the petitioning group of workers, employed at Fashions Apparel, Inc., El Paso, Texas, was issued on November 19, 1999 and is currently in effect (TA–W–36,874). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 2nd day of December, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–32996 Filed 12–20–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,516]

Jockey International, Carlisle Textile Plant, Carlisle, KY; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Jockey International, Carlisle Textile Plant, Carlisle, Kentucky. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–36,516; Jockey International Carlisle Textile Plant, Carlisle, Kentucky (December 2, 1999)

Signed at Washington, DC, this 6th day of December, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–32989 Filed 12–20–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,856]

Levingston Engineers, Inc., Sulphur, LA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Levingston Engineers, Inc., Sulphur, Louisiana. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–36,856; Levingston Engineers, Inc., Sulphur, Louisiana (December 2, 1999)

Signed at Washington, DC, this 6th day of December 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–32988 Filed 12–20–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,034]

Moltech Power Systems, Gainesville, Florida; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 8, 1999 in response to a worker petition which was filed on October 22, 1999 on behalf of workers at Moltech Power Systems, Gainesville, Florida.

An active certification covering the petitioning group of workers remains in effect (TA–W–34,695). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 24th day of November, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–32997 Filed 12–20–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,442]

Philips Lighting Company; Fairmont, WV; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated October 19, 1999, the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers (IUE), AFL–CIO, Local 627, requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of Philips Lighting Company, Fairmont, West Virginia. The denial notice was signed on September 15, 1999 and published in the **Federal Register** on October 14, 1999 (64 FR 55750).

The Department has reviewed the request for reconsideration and has

determined further investigation with respect to the products manufactured at the Fairmont facility and imports of products by Philips Lighting Corporation during the relevant period is warranted. The further review will seek to establish whether any articles produced at the Fairmont facility during the relevant period are like or directly competitive with any products imported by the company during that period or whether production of any article was shifted from the Fairmont facility to Mexico or Canada during the relevant period.

Conclusion

After careful review of the application, I conclude that the additional information provided by the petitioners is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 23d day of November 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33000 Filed 12–20–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,935]

Reef Gear Manufacturing, Incorporated, Plant II, Marine City, Michigan; Notice of Termination of Affirmative Determination Regarding Application for Reconsideration

On February 11, 1998, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on February 24, 1998 (63 FR 9264).

The Department initially certified TAA to workers of Reef Gear, Plant II, Marine City, Michigan producing gear blanks because the ''contributed importantly'' group eligibility requirement of section 22(3) of the Trade Act of 1974, as amended, was met.

The company requested that the certification be reconsidered because it felt that imports had not caused the worker separations and provided some information which the Department felt warranted a review of its certification. After repeated attempts to collect additional information from the company, and not receiving any further information, the Department is terminating its investigation for reconsideration of this petition.

Signed at Washington, DC, this 30th day of November 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–32993 Filed 12–20–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,110, Sylacagua, Alabama; TA–W–36,110E, Dadeville, Alabama; TA–W–36,110F, New # 1 Mill and 755 Lee Street Plants, Alexander City, Alabama; TA–W–36,110G, 8416 Hwy 231 North, Wetumpka, Alabama; TA–W–36,110H, Brundidge, Alabama]

Russell Corporation; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on June 8, 1999, applicable to workers of Russell Corporation, located in Sylacagua, Alabama. The notice was published in the **Federal Register** on June 30, 1999 (64 FR 35184).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information received by the company shows that worker separations occurred at the Dadeville, New #1 Mill and 755 Lee Street Plants, Alexander City, 8416 Hwy 231 North, Wetumpka and Brundidge, Alabama locations of Russell Corporation. The workers are engaged in the production of fleece wear and/or T-shirts.

The intent of the Department's certification is to include all workers of Russell Corporation who were adversely affected by increased imports.

Accordingly, the Department is amending the certification to cover the workers of Russell Corporation, Dadeville, New #1 Mill and 755 Lee Street Plants, Alexander City, 8416 Hwy 231 North, Wetumpka and Brundidge, Alabama.

The amended notice applicable to TA–W–36,110 is hereby issued as follows:

All workers of Russell Corporation, Sylacagua, Alabama (TA–W–36,110), Dadeville, Alabama (TA–W–36,110E), Alexander City, New #1 Mill and 755 Lee Street Plants, Alexander City, Alabama (TA–W–36,110F), 8416 Hwy 231 North, Wetumpka, Alabama (TA–W–36,110G), and Brundidge, Alabama (TA–W–36,110H) who become totally or partially separated from employment on or after April 12, 1998 through June 8, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington D.C. this 30th day of November, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–32995 Filed 12–20–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,038]

Williams Advanced Materials, Incorporated, Buffalo, New York; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 8, 1999 in response to a worker petition which was filed on behalf of all workers at Williams Advanced Materials, Incorporated, located in Buffalo, New York (TA–W–37,038).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 6th day of December 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–32998 Filed 12–20–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Trade Adjustment Assistance/NAFTA Financial Status Report/Request for Funds; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the

Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the Trade Adjustment Assistance/North American Free Trade Agreement (NAFTA) Transitional Adjustment Assistance program Financial Status Report/Request for Funds. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before February 22, 2000.

ADDRESSES: Jess Aragon or Erica Cantor, 200 Constitution Avenue, NW, Washington DC 20210, 202–219–7979 (this is not a toll free number). FAX number 202–219–6564.

SUPPLEMENTARY INFORMATION:

I. Background

The amendments to the Trade Act contained in the Omnibus Trade and Competitiveness Act (OTCA) of 1988 (Public Law 100–418) and Title 5 of the North American Free Trade Agreement Implementation Act (Public Law 103–182) of 1993 made some significant changes which affect the way the Trade Adjustment Assistance and North American Free Trade Agreement (NAFTA) Adjustment Assistance programs are funded and administered. These changes made enrollment in training programs an entitlement for workers adversely affected by imports (Trade program) or by imports from Canada or Mexico (NAFTA program). Thus, the Trade program and NAFTA trade program consists of entitlements for trade readjustment allowances, job search allowances, job relocation allowances and training. In order for workers to continue to receive entitlement to trade adjustment allowances, they must be enrolled in a training program approved by the Secretary of Labor (1423 of OTCA) for the trade program and (section 250 of the NAFTA Implementation Act) for the NAFTA program.

Although training becomes an entitlement under both programs, the OTCA imposed a training cap in section 236 for the Trade program and under subchapter D for the NAFTA program. The statutory cap is $80 million for the Trade program and $30 million for the NAFTA program. The purpose of the collection of this information on the Form ETA–9023 is to be able to monitor expenditures for both programs to ensure that the statutory ceilings are not exceeded.

Additionally, the Secretary of Labor is responsible for ensuring that resources are equitably distributed to the States. This form enables the ETA to evaluate a State's need for resources and to redistribute resources among States as necessary.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The ETA–9023 has been successfully utilized by the ETA and the States with only minor modifications since FY 1989. The **Federal Register** Notice requests an extension of the ETA–9023 for both the TAA and NAFTA programs. Overall, States have done a commendable job in completing the form with relatively minor problems or questions raised by the States on the form. The ETA–9023 has been extremely important to the ETA over the last several years because the entire $80 million available, under the statutory cap for the Trade program for training was allocated to the States. The ETA–9023 report was critical in allowing ETA to be able to redistribute resources equitably among States so training activity would not be discontinued in some States.

Type of Review: Reinstatement.

Title: Trade Adjustment Assistance/NAFTA Financial Status Report/Request for Funds.

OMB Number: 1205–0275.

Agency Number: ETA–9023.

Affected Public: State Government, State Employment Security Agencies.

Cite/Reference/Form/etc: See below.

Cite/reference	Total respondents	Frequency	Total responses	Average time per responses	Burden
TAA Rptg.	50	5	250	2 hrs.	500
NAFTA Rptg.	50	5	250	2 hrs.	500
Totals			500		1,000

The total costs is $26.00 × 100 hours = $26,000.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 15, 1999.

Jack H. Rapport,

Comptroller, Employment and Training Administration.

[FR Doc. 99–32985 Filed 12–20–99; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3265]

Georgia-Pacific Corporation, Bellingham, WA; Notice of Revised Determination on Reconsideration

On October 27, 1999, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration in response to an appeal filed by the Association of Western Pulp and Paper Workers on behalf of Local 194. The notice will soon be published in the **Federal Register**.

The workers at the subject firm produced liquefied chlorine gas and a byproduct, liquid caustic soda. The workers are not separately identifiable by product.

On reconsideration, the Department obtained evidence that the subject firm increased its reliance on imports from Canada of articles like or directly competitive with chlorine.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles from Canada like or directly competitive with chlorine, contributed importantly to the declines in sales or production and to the total or partial separation of workers of Georgia-Pacific Corporation, Bellingham, Washington. In accordance with the provisions of the Act, I make the following determination:

All workers of Georgia-Pacific Corporation, Bellingham, Washington, who became totally or partially separated from employment on or after June 16, 1998 through two years from the date of the certification, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, D.C. this 7th day of December 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–32991 Filed 12–20–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,633]

Levi Strauss & Company

Texas

TA–W–36,633A
HARLINGEN PLANT and Texas Commission for the Blind, HARLINGEN, TEXAS 78550

TA–W–36,633B
CYPRESS PLANT and Judy's Cafeteria, EL PASO, TEXAS 79905

TA–W–36,633C
McALLEN PLANT and Texas Commission for the Blind, McALLEN, TEXAS 78504

TA–W–36,633H
KASTRIN PLANT, including EL PASO DIGITAL IMAGING GRAPHICS OF THE EL PASO REGIONAL OFFICE, EL PASO, TEXAS 79907

TA–W–36,633I
BROWNSVILLE PLANT, BROWNSVILLE, TEXAS 78521

TA–W–36,633J
SAN BENITO PLANT, SAN BENITO, TEXAS 78586

TA–W–36,633K
SAN ANTONIO SEWING PLANT, SAN ANTONIO, TEXAS 78227

TA–W–36,633L
SAN ANTONIO FINISHING PLANT including SAN ANTONIO CREDIT UNION, SAN ANTONIO FINISHING PLANT, SAN ANTONIO, TEXAS 78227

TA–W–36,633P
RICHARDSON TECHNOLOGY CENTER, RICHARDSON, TEXAS 75081

TA–W–36,633Q
WESTLAKE DATA CENTER, WESTLAKE, TEXAS 76262

TA–W–36,633R
DALLAS CUSTOMER FULFILLMENT REGIONAL OFFICE, DALLAS, TEXAS 75252

TA–W–36,633Z
AMARILLO FINISHING FACILITY, AMARILLO, TEXAS 79107

Tennessee

TA–W–36,633D
JOHNSON CITY PLANT including TRI-CITIES MAID (GARY, TN), JOHNSON CITY, TENNESSEE 37605

TA–W–36,633E
MOUNTAIN CITY PLANT including DIVERSCO (Spartanburg, SC), and ARAMARK (Mountain City, TN), MOUNTAIN CITY, TENNESSEE 37683

TA–W–36,633S
KNOXVILLE REGIONAL OFFICE including GLOBAL FULFILLMENT SERVICES CENTER and KNOXVILLE DIGITAL IMAGING GRAPHICS DEPARTMENT, 1700 CHERRY STREET, KNOXVILLE, TENNESSEE 37917

California

TA–W–36,633N
VALENCIA SEWING FACILITY, SAN FRANCISCO, CALIFORNIA 94103

TA–W–36,633T
LEVI STRAUSS & COMPANY CORPORATE HEADQUARTERS, SAN FRANCISCO, CA 94111

Georgia

TA–W–36,633O
BLUE RIDGE PLANT, BLUE RIDGE, GEORGIA 31503

Florida

TA–W–36,633U
WESTON CUSTOMER FULFILLMENT REGIONAL OFFICE, WESTON, FLORIDA 33331

Kentucky

TA–W–36,633V
FLORENCE CUSTOMER SERVICE CENTER, FLORENCE, KENTUCKY 41042

TA–W–36,633W
HEBRON CUSTOMER SERVICE CENTER, HEBRON, KENTUCKY 41048

Mississippi

TA–W–36,633X
CANTON CUSTOMER SERVICE CENTER, CANTON, MISSISSIPPI 39046

Nevada

TA–W–36,633Y
SKY HARBOR CSC, HENDERSON, NEVADA 89012

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 11, 1999, applicable to workers of Levi Strauss & Company at eight facilities located in Texas, Tennessee, Georgia, and Virginia. The notice was published in the **Federal Register** on September 29, 1999 (64 FR 52541). In addition, the Department denied eligibility for an additional eight Levi Strauss & Company facilities in Texas, Tennessee, and California because there had not been threats of employment loss at those facilities. The notice was also published in the **Federal Register** on September 29, 1999 (64 FR 52539).

The company requested that the seven of the eight facilities (TA–W–36,633H through TA–W–633L, and TA–W–36,633N and O) which were previously denied be certified because of reduced work hours at each facility and provided information to indicate that workers had their work hours reduced by at least 20 percent. In addition, the company requested that contractors working full-

time at all of the facilities also be included in the certification. The company also requested that an additional eleven facilities and work sites in seven states (Texas, Tennessee, California, Florida, Kentucky, Mississippi, and Nevada) be included as a result of additional layoff announcements.

The intent of the Department's certification is to include all workers of the subject firm, including full time contractors working at the identified facilities, adversely affected by increased imports. Accordingly, the Department is amending the certification to include workers impacted by articles like or directly competitive with denim and Docker apparel.

The amended notice applicable to TA–W–36,633 is hereby issued as follows:

All workers of the following Levi Strauss & Company facilities who became totally or partially separated from employment who became totally or partially separated from employment on or after August 8, 1999 through August 11, 2001 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974:

TA–W–36,633 WICHITA FALLS PLANT, WICHITA FALLS, TEXAS 76303
TA–W–36,633A HARLINGEN PLANT, including TEXAS COMMISSION FOR THE BLIND, HARLINGEN, TEXAS 78550
TA–W–36,633B CYPRESS PLANT, including JUDY's CAFETERIA, EL PASO, TEXAS 79905
TA–W–36,633C McALLEN PLANT, including TEXAS COMMISSION FOR THE BLIND, McALLEN, TEXAS 78504
TA–W–36,633D JOHNSON CITY PLANT, including TRI-CITIES MAID (Gary, TN) JOHNSON CITY, TENNESSEE 37605
TA–W–36,633E MOUNTAIN CITY PLAN, including DIVERSCO (Spartanburg, SC) and ARAMARK MOUNTAIN CITY, TENNESSEE 37683
TA–W–36,633F WARSAW PLANT, WARSAW, VIRGINIA 22572
TA–W–36,633G VALDOSTA PLANT, VALDOSTA, GEORGIA 31601
TA–W–36,633J KASTRIN PLANT, KASTRIN, TEXAS 79907
TA–W–36,633I BROWNSVILLE PLANT, BROWNSVILLE, TEXAS 78521
TA–W–36,633J SAN BENITO PLANT, SAN BENITO, TEXAS 78586
TA–W–36,633K SAN ANTONIO SEWING PLANT, SAN ANTONIO, TEXAS 78227
TA–W–36,633L SAN ANTONIO FINISHING PLANT, including SAN ANTONIO CREDIT UNION, SAN ANTONIO FINISHING PLANT, SAN ANTONIO, TEXAS 78227
TA–W–36,633N VALENCIA SEWING FACILITY, SAN FANCISCO, CALIFORNIA 94103
TA–W–36,633O BLUE RIDGE PLANT, BLUE RIDGE GEORIGA 31503
TA–W–36,633P RICHARDSON TECHNOLOGY CENTER, RICHARDSON, TEXAS 75081
TA–W–36,633Q WESTLAKE DATA CENTER, WESTLAKE, TEXAS
TA–W–36,633R DALLAS CUSTOMER FULFILLMENT REGIONAL OFFICE, DALLAS, TEXAS 75252
TA–W–36,633S KNOXVILLE REGIONAL OFFICE, including GLOBAL FULFILLMENT SERVICES CENTER and KNOXVILLE DIGITAL IMAGING GRAPHICS DEPARTMENT, 1700 CHERRY STREET, KNOXVILLE, TENNESSEE 37917
TA–W–36,633T LEVIS STRAUSS & COMPANY CORPORATE HEADQUARTERS, SAN FRANCISCO, CALIFORNIA 94111
TA–W–36,633U WESTON CUSTOMER FULFILLMENT REGIONAL OFFICE, WESTON, FLORIDA 33331
TA–W–36,633V FLORENCE CUSTOMER SERVICE CENTER, FLORENCE, KENTUCKY 41042
TA–W–36,633W HEBRON CUSTOMER SERVICE CENTER, HEBRON, KENTUCKY 41048
TA–W–36,633X CANTON CUSTOMER SERVICE CENTER, CANTON, MISSISSIPPI 39046
TA–W–36,633Y SKY HARBOR CSC, HENDERSON, NEVADA 89012.''

Signed in Washington, D.C. this 29th day of November 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–32992 Filed 12–20–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–003545]

Wabash Technologies, Wabash Magnetics Automotive Product Group, Huntington, Indiana; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182 concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on November 2, 1999, in response to a petition filed on behalf of workers at Wabash Technologies, Wabash Magnetics Automotive Product Group, Huntington, Indiana. Workers produce automotive-related sensors.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 7th day of December 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–32999 Filed 12–20–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02932]

Westinghouse Electric Company Energy Systems Business Unit (ESBU) Including Leased Workers of Landrum Staff Services and CDI/Pensacola, Pensacola, FL; Amended Certification Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(A), subchapter D, chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on April 1, 1999, applicable to workers of Westinghouse Electric Company, Energy Systems Business Unit (ESBU), Pensacola, Florida. The notice was published in the **Federal Register** on May 11, 1999 (64 FR 25374).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that some workers of Westinghouse Electric Company, Energy Systems Business Unit (ESBU), were leased from Landrum Staff Services and CDI/Pensacola to produce air cooled electric generators at the Pensacola, Florida facility. Worker separations occurred at Landrum Staff Services and CDI/Pensacola as a result of worker separations at Westinghouse Electric Company, Energy Systems Business Unit (ESBU).

Based on these findings, the Department is amending the certification to include workers of Landrum Staff Services and CDI/Pensacola, Pensacola, Florida leased to Westinghouse Electric Company, Energy Systems Business Unit (ESBU), Pensacola, Florida.

The intent of the Department's certification is to include all workers of Westinghouse Electric Company, Energy Systems Business Unit (ESBU) adversely affected by imports from Mexico.

The amended notice applicable to NAFTA–02932 is hereby issued as follows:

All workers of Westinghouse Electric Company, Energy Systems Business Unit (ESBU), Pensacola, Florida and leased workers of Landrum Staff Services and CDI/Pensacola, Pensacola, Florida engaged in employment related to the production of air cooled electric generators at Westinghouse Electric Company, Energy Systems Business Unit (ESBU), Pensacola, Florida who became totally or partially separated from employment on or after March 18, 1999 through April 1, 2001 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 7th day of December, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–32990 Filed 12–20–99; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of a currently approved information collection for requesting permission to use privately-owned equipment to microfilm archival holdings in the National Archives of the United States and Presidential libraries. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before February 22, 2000 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 3200, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–6913; or electronically mailed to tamee.fechhelm@arch2.nara.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–713–6730, ext. 226, or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) whether the proposed collection information is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (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 the use of information technology. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Request to Microfilm Records.

OMB number: 3095–0017.

Agency form number: None.

Type of review: Regular.

Affected public: Companies and organizations that wish to microfilm archival holdings in the National Archives of the United States or a Presidential library for micropublication.

Estimated number of respondents: 5.

Estimated time per response: 10 hours.

Frequency of response: On occasion (when respondent wishes to request permission to microfilm records).

Estimated total annual burden hours. 50

Abstract: The information collection is prescribed by 36 CFR 1254.92. The collection is prepared by companies and organizations that wish to microfilm archival holdings with privately-owned equipment. NARA uses the information to determine whether the request meets the criteria in 36 CFR 1254.94, to evaluate the records for filming and to schedule use of the limited space available for filming.

Dated: December 15, 1999.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 99–33007 Filed 12–20–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before February 4, 2000. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301)713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of

records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too, includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Defense, Office of the Inspector General (N1–509–00–1, 2 items, 1 temporary item). Electronic copies of documents created using electronic mail and word processing that relate to investigations of the loss of U.S. Central Command nuclear, biological, and chemical desk logs accumulated during the Persian Gulf War. Recordkeeping copies of these files are proposed for permanent retention.

2. Department of Defense, Office of the Inspector General (N1–509–00–2, 2 items, 2 temporary items). Records of investigations of deaths of members of the Armed Forces from self-inflicted causes, 1994–1999, including electronic copies of documents created using electronic mail and word processing. This schedule also increases the retention period for recordkeeping copies of these files, which were previously approved for disposal.

3. Department of Energy, Agency-wide (N1–434–98–24, 5 items, 4 temporary items). Investigative records that lack historical significance, including files stemming from allegations that do not result in an investigation. Files include reports, correspondence, and supporting working papers. Files that pertain to cases that attract media or congressional attention, result in substantive changes in agency policy, or document major violations of criminal law are proposed for permanent retention. A 75 year retention period is proposed for temporary files that pertain to environmental matters or health and safety issues.

4. Department of Health and Human Services, Office of the Assistant Secretary for Health (N1–514–99–1, 4 items, 4 temporary items). Older records accumulated primarily during the 1970s and 1980s. Included are such records as contract files related to health care statistics, correspondence relating to the administrative activities of the Division of Health Examination Statistics, expired project files of the Division of Data Policy documenting the process by which administrative clearances were obtained for studies, and contract files relating to the establishment of health service management operations in several localities.

5. Department of Housing and Urban Development, Federal Housing Administration (N1–31–99–1, 18 items, 10 temporary items). Closed case files for servicing and tracking loan accounts, working copies of statistical summaries and reports, and fiscal accounting records. Temporary records were accumulated between 1934 and 1971. Records proposed for permanent retention include policy correspondence, studies, procedural memos, subject files, and market analysis reports.

6. Department of the Treasury, U.S. Customs Service (N1–36–99–1, 15 items, 3 temporary items). Central File segments relating to specific actions involving rate setting, classification of merchandise, entry duties, exemptions, and similar matters, 1902–1964. Also proposed for disposal are card indexes to temporary investigation files, 1938–1958, and files on management improvement projects accumulated during the 1960s that pertain to such matters as forms management, space utilization, and personnel management. A wide variety of older records pre-dating 1970 are proposed for permanent retention including letter books and ledgers of the Vermont District, records of the Port of New York Collector's Office, records relating to clearances and entrances at the Port of Baltimore, and selected Central File segments, 1902–1964.

7. Department of the Treasury, United States Mint (N1–104–99–3, 3 items, 3 temporary items). Correspondence, contracts, monitoring reports, statements of work, periodic inspection plans and schedules, and surveys relating to asbestos abatement in agency facilities. Also included are electronic copies of documents created using electronic mail and word processing.

8. Environmental Protection Agency, Office of Pesticides Programs (N1–412–99–13, 3 items, 3 temporary items). Company transfer files, including paper and microfilm records and electronic copies of documents created using electronic mail and word processing. The records consist of correspondence, transfer agreements, and other supporting documentation that pertain to the transfer or ownership of companies, products, and data.

9. Environmental Protection Agency, Agency-wide (N1–412–99–14, 5 items, 5 temporary items). Appointee clearance files and laboratory performance evaluation records, including electronic copies of records created using electronic mail and word processing. Clearance files document the selection of political appointees and include applications for employment, background information about individuals, financial disclosure forms, security clearances, and White House clearance checklists. Laboratory performance files document the accreditation program for labs and include statistical reports, performance summaries, and other documents, used to measure the quality of work performed at laboratories.

10. Environmental Protection Agency, Agency-wide (N1–412–99–15, 2 items, 2 temporary items). Case files and working papers for mission-related projects that explore new technologies or methods for improving the environment, including electronic copies of records created using electronic mail and word processing. The records include proposals,

monitoring and measurement plans, correspondence, progress reports, and other supporting documentation. The records do not include final reports on the planning and establishment of agency programs following pilot projects, which were previously approved for permanent retention.

11. Environmental Protection Agency, Agency-wide (N1–412–99–21, 2 items, 2 temporary items). Records relating to **Federal Register** notices, including drafts and final notices, tear sheets from the **Federal Register**, newspaper clippings, press releases, citations and abstracts of articles, correspondence, logs, and tracking systems. Also included are electronic copies of documents created using electronic mail and word processing.

12. Environmental Protection Agency, Agency-wide (N1–412–99–22, 4 items, 4 temporary items). Quality Assurance Project Plans and Quality Management Plans, including electronic copies of records created using electronic mail and word processing. Records document administrative procedures for ensuring that environmental data used to support agency decisions are of adequate quality and usability for their intended purpose. Included are records that establish criteria for planning, implementing, documenting, and assessing data collection activities.

13. Railroad Retirement Board, Office of Programs (N1–184–99–1, 6 items, 6 temporary items). Paper and optical disk copies of Railroad Unemployment Insurance Act records compiled in determining the validity of sickness insurance applications and unemployment claim forms for compensation administered by the agency. Also included are electronic copies of documents created using electronic mail and word processing.

14. Federal Energy Regulatory Commission, Office of the Chief Information Officer (N1–138–99–2, 7 items, 7 temporary items). Records relating to the Commission Issuance Posting System Manager, an electronic database for internal agency use that contains copies of issuances and related documents. Included are input documents, the master database, outputs (including text files used for input into a publicly available data base), system documentation, and electronic copies of records created using electronic mail and word processing. Recordkeeping copies of the agency's issuances were previously approved for permanent retention.

15. Federal Energy Regulatory Commission, Office of the Chief Information Officer (N1–138–98–7, 4 items, 4 temporary items). Records relating to the Commission Issuance Posting System, an electronic database of agency issuances created for public reference use. Included are input documents, the master database, outputs, and system documentation.

16. National Gambling Impact Study Commission, Agency-wide (N1–220–99–3, 40 items, 11 temporary items). Background information and unsolicited public opinion and reference files not used for decision-making purposes by the Commission. Also included are electronic copies of records created using electronic mail, word processing, and web-based systems. Records proposed for permanent retention include correspondence files, meeting files, subject files, subcommittee files, case studies, reports, and publications. Electronic information systems pertaining to the Commission's comprehensive study of the legal, social, and economic impact of gambling on American society are also proposed for permanent retention.

Dated: December 10, 1999.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 99–33006 Filed 12–20–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL INDIAN GAMING COMMISSION

Fee Rates

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given, pursuant to 25 CFR 514.1(a)(3), that the National Indian Gaming Commission has adopted final annual fee rates of 0.00% for tier 1 and 0.08% (.0008) for tier 2 for calendar year 1999. These rates shall apply to all assessable gross revenues from each gaming operation under the jurisdiction of the Commission.

FOR FURTHER INFORMATION CONTACT: Bobby Gordon, National Indian Gaming Commission, 1441 L Street, NW, Suite 9100, Washington, DC 20005; telephone 202/632/7003; fax 202/632/7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act established the National Indian Gaming Commission which is charged with, among other things, regulating gaming on Indian lands.

The regulations of the Commission (25 CFR part 500) provide for a system of fee assessment and payment that is self-administered by the gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates; the gaming operations are required to apply those rates to their revenues, compute the fees to be paid, report the revenues, and remit the fees to the Commission on a quarterly basis.

The regulations of the Commission and the rates being finalized today are effective for calendar year 1999.

Elizabeth L. Homer,

Vice-Chairman.

[FR Doc. 99–33079 Filed 12–20–99; 8:45 am]

BILLING CODE 7565–01–M

NUCLEAR REGULATORY COMMISSION

[License No. 37–20553–01 (Suspended) Docket No. 030–19405, EA 99–217]

Alfonso DeLeo, Jr., P.O. Box 312, Ardmore, PA 19003; Order Modifying Order Suspending License (Effective Immediately) and Order Revoking License

I

Alfonso DeLeo (Mr. DeLeo or licensee) is the holder of suspended Byproduct Material License No. 37–20553–01 (license) that was originally issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 on April 4, 1982. The license authorized: (1) Possession and use of cesium-137 and americium-241 sealed sources (gauges) at temporary jobsites of the licensee anywhere in the United States where the Commission maintained jurisdiction for regulating the use of licensed material; and (2) storage of the licensed material at 141 Golf Hills Road, Havertown, PA. The license has an expiration date of March 31, 2004. Licensees of the Commission are required to pay annual fees.

II

Pursuant to 10 CFR 171.16, Mr. DeLeo is required to pay an annual fee for the license. In accordance with 10 CFR Part 15, the licensee was sent an original invoice, a second invoice, and a final notice requesting payment. The final notice of payment due specifically informed the licensee that ''non-payment of your fee may result in the revocation of your license in accordance with the enforcement provisions of the Commission's regulations,'' namely, 10 CFR 171.23. The NRC conducted an inspection at Mr. DeLeo's Havertown, PA facility on November 16, 1994, at which time he still possessed the

gauges, and had not paid the annual fees. To date, the annual fee(s) listed below have not been paid as required by 10 CFR Part 171.

DELINQUENT INVOICES

Invoice date	Invoice No.	Amount billed	Comment
1. 8/9/91	AMO2856–91	$1,400.00	FY 1991 Annual Invoice.
2. 8/24/92	AMO2423–92	400.00	FY 1992 Annual Invoice.
3. 8/21/93	AMO2764–93	400.00	FY 1993 Annual Invoice.
4. 8/20/94	AMO2144–94	2,470.00	FY 1994 Annual Invoice.
5. 7/22/95	AMO2094–95	1,700.00	FY 1995 Annual Invoice.

On February 12, 1996, the NRC issued an Order Suspending License (Effective Immediately) to Alfonso DeLeo, Jr., based on the non-payment of license fees for fiscal years 1991 through 1995. The Order of February 12, 1996, required, among other things, that Alfonso DeLeo, Jr. dispose of any licensed material acquired or possessed under the authority of License No. 37–20553–01. As of the date of this Order, Mr. DeLeo had not complied with the February 12, 1996 Order, in that he has not disposed of the subject licensed material.

During a subsequent inspection by the NRC at Mr. DeLeo's Havertown, PA facility on December 5, 1996, the NRC determined that he failed to notify the Commission in accordance with 10 CFR 30.36(d)(3) of the cessation of principal licensed activities. Specifically, Mr. DeLeo had ceased activities prior to August 15, 1994, the regulation's effective date. As a result, a Notice of Violation (Notice) was issued on December 16, 1996. Mr. DeLeo failed to reply to the Notice within 30 days of its issuance as required by 10 CFR 2.201. The NRC contacted Mr. DeLeo on February 13, 1997, concerning his failure to reply to the December 16, 1996 Notice, and he indicated that he would reply to the Notice. Mr. DeLeo did not reply to the Notice until March 16, 1998.

Prior to that reply, the NRC also sent Mr. DeLeo a letter on February 24, 1997, describing the Decommissioning Timeliness rule (10 CFR 30.36), and indicating that the licensed material in his possession needed to be transferred to another authorized recipient by October 15, 1998. The letter further stated that failure to dispose of licensed material by that date could result in significant enforcement action, including the imposition of monetary civil penalties. Nonetheless, Mr. DeLeo did not transfer the gauges. During another inspection of Mr. DeLeo's Havertown, PA, facility on March 16, 1998, he was again informed that 10 CFR 30.36 required him to transfer licensed material to an authorized recipient by October 15, 1998.

The NRC attempted to contact Mr. DeLeo several times between December 30, 1998, and March 10, 1999 by leaving messages on his answering machine to determine the status of the licensed material. As of April 1, 1999, Mr. DeLeo had not returned the telephone calls. As a result, a joint inspection/investigation by the NRC's Division of Nuclear Materials Safety and Office of Investigations was conducted on April 1, 1999, at his Havertown, PA, facility. That investigation disclosed that Mr. DeLeo still retained possession of the gauges. Based on the above, including the OI investigation, the NRC concluded that Mr. DeLeo was in willful violation of NRC requirements.

Since Mr. DeLeo had not conducted his activities in full compliance with NRC requirements, a written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon Mr. DeLeo by letter dated June 2, 1999. The Notice states the nature of the violation, the provision of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

Although Mr. Deleo confirmed to the NRC, during a telephone conversation on June 18, 1999, that he had received the NRC's June 2, 1999 letter transmitting the Notice of Violation and Proposed Imposition of Civil Penalty, he failed to respond to it and was still in possession of the gauges. Therefore, the NRC staff issued an Order on August 23, 1999, imposing a $5,500 civil penalty and also proposing additional daily penalties in the amount of $500 per day for his continued failure to transfer the gauges. Subsequently, the NRC held a management meeting with Mr. DeLeo on November 9, 1999 in the Region I office to explain the NRC's position and provide Mr. DeLeo an opportunity to explain his position. Mr. DeLeo did not agree with the NRC's position that he must immediately transfer his licensed material to an authorized recipient.

III

The deliberate failures of the licensee to: (1) Comply with the February 12, 1996 Order (suspension of license); (2) pay the annual fee as required by Commission regulations; and (3) comply with 10 CFR 30.36 demonstrate that the licensee is either unwilling or unable to comply with Commission requirements. Consequently, I lack the requisite reasonable assurance that public health and safety will be protected if the licensee were to continue to be in possession of licensed material at this time. Therefore, the public health, safety, and interest require that the licensee leak test the licensed material prior to transfer to an authorized recipient; that the licensee transfer the licensed material to an authorized recipient within 30 days as described below; and that Byproduct Material License No. 37–20553–01 be revoked. Furthermore, pursuant to 10 CFR 2.202, I find that the significance and willfulness of the violations described above is such that no further notice is required and that the public health, safety and interest require that the provisions of Section IV.A. of this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR Parts 30, 170, and 171,

A. *It is hereby ordered,* effective immediately, that:

1. The requirements of Paragraphs A through E of Section III of the Order dated February 12, 1996, and attached hereto remain in effect except where modified below.

2. The licensee shall complete a leak test pursuant to Byproduct Material License No. 37–20553–01, Condition 12.A., B., C., D., E., F., and G. to confirm the absence of leakage and to establish the levels of residual radioactive contamination prior to transfer of the gauges to an authorized recipient.

3. Within 30 days of the date of this Order, the licensee shall cause all licensed material in its possession to be transferred to an authorized recipient in accordance with 10 CFR 30.41.

4. After the conditions of Paragraph 3 are met and within 30 days of the date of this Order, the licensee shall submit a completed NRC Form 314 to the Regional Administrator, NRC Region I, at 475 Allendale Road, King of Prussia, Pennsylvania 19406–1415.

B. *It is further ordered* that:

1. Upon a written finding by the Regional Administrator, NRC Region I, that no licensed material remains in the licensee's possession and that other applicable provisions of 10 CFR 30.36 have been fulfilled, Byproduct Material License No. 37–20553–01 is revoked.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above provisions upon demonstration of good cause by the licensee.

V

In accordance with 10 CFR 2.202, the licensee must, and any other person adversely affected by this Order may submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and shall include a statement of good cause for the extension. The answer may consent to the Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and set forth the matters of fact and law on which the licensee or other person adversely affected relies and reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemakings and Adjudications Staff, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406–1415; and to the licensee if the answer or hearing request is by a person other than the licensee. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the licensee, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 13th day of December 1999.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Deputy Executive Director for Materials, Research and State Programs.

[FR Doc. 99–33021 Filed 12–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–458]

Entergy Operations, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–47 issued to Entergy Operations, Inc. (the licensee), for operation of the River Bend Station, Unit 1 (RBS) located in West Feliciana Parish, Louisiana.

The proposed amendment would add an exception to the RBS Technical Requirements Manual (TRM), Section TR 3.9.14, current prohibition for travel of loads in excess of 1200 pounds over fuel assemblies in the spent fuel storage. The exception would allow the movement of spent fuel pool watertight gates, which separate the spent fuel pool from the cask and lower transfer pools. Approval of this exception would allow the licensee to perform maintenance and repairs to the gates and watertight seals, provided the licensee complies with the defense-in-depth recommendations, or take alternative measures to compensate for deficiencies in the defense-in-depth approach, addressed in NUREG–0612, ''Control of Heavy Loads at Nuclear Power Plants.'' Corresponding sections of the RBS Updated Safety Analysis Report (USAR) would be revised to be consistent with the exception and to state that the provisions of NUREG–0612 will be met.

The load of the gate (approximately 1600 pounds) and rigging (approximately 400 pounds) exceeds the load analyzed over spent fuel. In accordance with the guidance in Nuclear Regulatory Commission (NRC) Bulletin 96–02, ''Movement of Heavy Loads over Spent Fuel, over Fuel in the Reactor Core, or over Safety-Related Equipment,'' issued April 11, 1996, and Title 10 of the *Code of Federal Regulations,* Part 50.59 (10 CFR 50.59), these changes have been determined to involve an unreviewed safety question.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involved a significant increase in the probability or consequences of an accident previously evaluated.

The River Bend Station (RBS) fuel building fuel storage facilities consist of three separate

but interconnected stainless steel-lined concrete pools. The spent fuel storage pool is the largest of these pools. Adjacent to the fuel storage pool are the cask pool and the lower inclined fuel transfer (IFTS) pool. Each of these two pools is separated from the fuel storage pool by a full-height wall broken by a watertight gate. The watertight gates are normally open, but are closed to seal their respective pools during cask handling and equipment maintenance operations. It is necessary to lift the gate between the spent fuel pool and the IFTS pool for seal replacement. The total weight of the gate including the rigging equipment is 2000 pounds. This lift is considered as a heavy load lift since it is higher than the current RBS analyzed light load limit of 1200 pounds for movement of loads over the spent fuel pool. RBS TRM 3.9.14 prohibits any load in excess of 1200 pounds from travel over fuel assemblies in the storage pool.

Each of the gates is designed with a pneumatic seal that, when pressurized, seals the respective pool from the spent fuel pool, forming a watertight barrier. No provisions for moving the gates over spent fuel were included in the licensing basis for RBS heavy loads. However, the qualified life for the gate seals necessitates that they be replaced several times over the life of the plant. Therefore, approval of an exception to the current prohibition for loads over the spent fuel pool is required to allow for replacement of the gate seals.

To perform the movement of the gate from its installed position to a position where it can be accessed for seal replacement, an engineering plan that meets the intent of NUREG–0612, ''Control of Heavy Loads [at Nuclear Power Plants],'' has been developed. There are numerous design features, which comply with NUREG–0612 guidelines, that will preclude the gate from dropping onto the spent fuel assemblies during the movement activity. These features include the design of the lifting devices, design of the cask and fuel bridge cranes, crane operator training, and the use of written procedures. The guidance in NUREG–0612 will be met in all respects, except that in lieu of a single[-]failure-proof crane, the scheme will employ redundant and diverse means to meet the intent of single-failure[-]proof movements.

It is proposed for the subject spent fuel pool gate lift to use one of two rigging schemes that comply with the intent of NUREG–0612 guidance. The first one will be accomplished through the use of Fuel Building bridge crane and the cask crane at the same time to provide the redundancy required to make the lift a single-failure-proof lift and satisfy NUREG–0612 single-failure-proof criteria. The other rigging scheme will involve the use of lifting lugs welded to the overhead structural steel members and special lifting devices that are designed in accordance with NUREG–0612 single-failure-proof criteria.

In the first rigging scheme, the fuel building bridge crane and the cask crane will be used to perform the gate lifting and movement. The intent of NUREG–0612 is that in lieu of providing a single-failure-proof crane system, the control of heavy loads guidelines can be satisfied by establishing that the potential for a heavy load drop is extremely small. The gate lifting using the fuel building bridge crane and cask crane will conform with NUREG–0612 guidelines in that the probability of the gate drop over the spent fuel assemblies is extremely small. Both cranes have a rated capacity of fifteen (15) tons. The maximum weight of the gate and associated lifting devices is one (1) ton. Therefore, there is ample safety factor margin for lifting and movements of the subject spent fuel pool gate. Special lifting devices, which have redundancy or ultimate strength of at least 10 times the lifted load, will also be utilized during the rigging process. Even though neither the fuel building bridge crane or the cask crane is a single-failure-proof crane, rigging the spent fuel pool gate using these cranes will provide the required redundancy that meets the intent of NUREG–0612 single-failure-proof criteria.

In the second rigging scheme, the initial gate lift will be performed through the use of structural steel lugs that are permanently welded to the Fuel Building overhead structural steel girder located over the centerlines of the wall openings for the two gates that separate the spent fuel pool from the IFTS and the cask pools. For example, the IFTS lower pool gate will be moved northward toward the cask pool opening using the aforementioned structural steel lugs and lifting devices such as chains, slings, and shackles. Once the gate is through the cask pool opening, the movement path will no longer be over irradiated spent fuel. Once through the cask pool opening, the gate will be moved eastward toward the center of the cask pool. The cask crane auxiliary hook will lift the gate inside the cask pool. Finally, the gate will be placed on the Fuel Building floor elevation 113 [feet] adjacent to the cask pool for seal replacement. For the movement of the gate between the spent fuel pool and the cask pool, the distance of the movement is reduced because the gate movement would essentially entail lifting of the gate to above the hinges, rotating it, and moving it through the opening directly into the cask pool. Though seal replacement on the cask pool gate is not necessary at the present time, it may be necessary in the future. As such, the proposed changes would allow movement of either of the two spent fuel pool gates for repair or seal replacement.

The proposed load lift of the fuel pool gate for replacement of the seal conforms to all of the NUREG–0612 guidelines included in Section 5.1.5(1)(a) and 5.1.6. The design of the lifting lugs and associated lifting devices (chains, slings, shackles, hoists, *etc.*) will conform to the guidelines of NUREG–0612, Section 5.1.6, ''Single-Failure Proof Handling System.'' The auxiliary hook of the cask crane has a rated capacity of 15 tons. The cask crane is not a single-failure[-]proof crane. However, it meets NUREG–0612 criteria of Section 5.1.1(6) and is designed for seismic loading. As discussed above, the cask crane, alone, will handle the gate only after the gate is located inside the cask pool where drop of the gate above the spent fuel rack is no longer a concern. The cask pool area has been evaluated for an accidental drop of the spent fuel cask. There is no safety-related equipment inside the cask pool. The maximum weight of the gate and associated lifting devices is 2000 pounds. Therefore, there is ample safety factor margin for lifting the gate with the cask crane.

The probability and consequences of a seismic event are not affected by the proposed gate lifting. The consequences of a seismic event during the gate lifting are insignificant since both cranes, the fuel building bridge crane and the cask crane, are seismically qualified for the lifted load. In addition, the design of all rigging devices conforms to NUREG–0612 guidelines, with a factor of safety of 10 ultimate strength for the weight of the load.

Consistent with the defense-in-depth approach outlined in NUREG–0612, the movement will be conducted according to load handling instructions, operator training will be conducted on the activity prior to the movement, and the equipment will be inspected and checked before the movement will be performed. NUREG–0612 gives guidance that when a particular heavy load must be brought over spent fuel, alternative measures may be used. The combination of preventative measures, as proposed, minimizes the risks inherent in hauling large loads over spent fuel to permissible levels. With these provisions and the guidance in NUREG–0612, the increase in probability of a load drop is negligible.

It is therefore concluded that the proposed gate lifting and movement does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The lifting of the fuel pool gate in the spent fuel pool as described above, minimizes the possibility of a heavy load drop onto spent fuel assemblies as not credible in accordance with NUREG–0612 single-failure-proof criteria. In addition, movement of the gate in the cask pool using the cask crane does not create the possibility of a new or different kind of accident. The cask drop accident scenario in the current RBS licensing basis, since the cask crane is not a single-failure-proof crane, envelops the accidental drop of the gate in the cask pool during handling by the cask crane. That is, the analyzed weight of a cask is 125 tons versus the weight of the gate and the associated rigging of 1 ton.

It is therefore concluded that the proposed gate lifting does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

By following the guidance in NUREG–0612, the movement of the spent fuel pool gates will have no impact on the analyses of postulated design basis events for RBS. The NRC guidance provides an acceptable means of ensuring the appropriate level of safety and protection against load drop accidents. Therefore, there is no reduction in the margin of safety associated with postulated design basis events at RBS in allowing the proposed change to the RBS licensing basis. RBS will continue to meet its commitment to comply with NUREG–0612.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 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. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 28, 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 accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

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: 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 Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005, attorney for the licensee.

Non-timely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the

Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 16, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 17th day of December 1999.

For the Nuclear Regulatory Commission.

Robert J. Fretz,

Project Manager, Section 1, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–33134 Filed 12–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–400]

Carolina Power & Light Company; Shearon Harris Nuclear Power Plant, Unit 1, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–63, issued to Carolina Power & Light Company (CP&L, the licensee), for operation of the Shearon Harris Nuclear Power Plant, Unit 1, (HNP) located in Wake and Chatham Counties, North Carolina.

Environmental Assessment

Identification of the Proposed Action

The proposed action would support a modification to HNP to increase the spent fuel storage capacity by adding rack modules to spent fuel pools (SFPs) 'C' and 'D' and placing the pools in service. The proposed action consists of: (1) A revision to Technical Specification (TS) 5.6 to identify pressurized water reactor (PWR) burnup restrictions, boiling water reactor (BWR) enrichment limits, pool capacities, heat load limitations and nominal center-to-center distances between fuel assemblies in the racks to be installed in SFPs 'C' and 'D'; (2) an alternative plan in accordance with the requirements of 10 CFR 50.55a to demonstrate an acceptable level of quality and safety in completion of the component cooling water (CCW) and SFPs 'C' and 'D' cooling and cleanup system piping; and (3) an unreviewed safety question for additional heat load on the CCW system.

The proposed action is in accordance with the licensee's application for amendment dated December 23, 1998, as supplemented by letters dated April 30, June 14, July 23, September 3, October 15, and October 29, 1999.

The Need for the Proposed Action

The proposed action is needed for the licensee to provide spent fuel storage capacity for all four CP&L nuclear units (Harris, Brunswick 1 and 2, and Robinson) through the end of their current licenses.

HNP was originally planned as a four nuclear unit site and the fuel handling building (FHB) was designed and constructed with four separate pools capable of storing spent fuel. HNP Units 3 and 4 were canceled in late 1981 and HNP Unit 2 was canceled in late 1983. The FHB, all four pools (including liners), and the cooling and cleanup system to support SFPs 'A' and 'B' were completed. However, construction on SFPs 'C' and 'D' was discontinued after Unit 2 was canceled and the system was not completed. HNP, Unit 1 began operation in 1987 with SFPs 'A' and 'B' in service.

As permitted by the HNP operating license issued on January 12, 1987, CP&L has implemented a spent fuel shipping program. Spent fuel from Brunswick (2 BWR units) and Robinson (1 PWR unit) is shipped to HNP for storage in the HNP SFPs. CP&L ships fuel to HNP in order to maintain full core offload capability at Brunswick and Robinson. As a result of the operation of HNP, shipping program requirements, and the unavailability of a Department of Energy (DOE) storage facility, it will be necessary to activate SFPs 'C' and 'D' and the associated cooling and cleanup system by early in the year 2000. Activation of these pools will provide spent fuel storage capacity for all four CP&L units through the end of their current operating licenses.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes there are no significant environmental impacts. The factors considered in this determination are discussed below.

Radioactive Waste Treatment

HNP uses waste treatment systems designed to collect and process gaseous, liquid, and solid waste that might contain radioactive material. These radioactive waste treatment systems are discussed in the Final Environmental Statement (FES, NUREG–0972) dated October 1983, and evaluated in the Safety Evaluation Report (SER, NUREG–1083) dated November 1983. The proposal to increase the spent fuel storage capacity at HNP will not involve any change in the waste treatment systems described in the FES or SER.

Gaseous Radioactive Wastes

Gaseous releases from the fuel storage area are combined with other plant exhausts. Normally, the contribution from the fuel storage area is negligible compared to the other releases and no significant increases are expected as a result of the expanded storage capacity. Storing spent fuel in four pools (instead of the previous two pools) will result in an increase in the SFP evaporation rate. The licensee has determined that the increased evaporation will increase the relative humidity of the fuel building atmosphere by less than 10%. This increase is within the capacity of both the normal and the Engineered Safety Feature (ESF) ventilation systems. The net result of the increased heat loss and water vapor emission to the environment will be negligible.

Solid Radioactive Wastes

Spent resins are generated by the processing of SFP water through the SFP purification system. These spent resins are disposed of as solid radioactive waste. The necessity for pool filtration resin replacement is determined primarily by the requirement for water clarity, and the resin is normally expected to be changed about once a year. The licensee does not expect the resin change-out frequency of the SFP purification system to be permanently increased as a result of the expanded storage capacity. During racking operations, a small amount of additional resins may be generated by the pool cleanup system on a one-time basis.

Radiological Impact Assessment

For this modification the licensee plans to install region 2 (non-flux trap style) rack modules in pools 'C' and 'D' in incremental phases, on an as-needed basis. The licensee estimates that the collective dose associated with the proposed fuel rack installation is in the range of 2–3 person-rem.

All of the operations involved in racking will use detailed procedures prepared with full consideration of ALARA (as low as reasonably achievable) principles. The HNP racking

project represents low radiological risk because the pools currently contain no spent fuel. The Radiation Protection Department will prepare Radiation Work Permits (RWPs) for the various jobs associated with the SFP rack installation operation. These RWPs will instruct the project personnel in the areas of protective clothing, general dose rates, contamination levels and dosimetry requirements. Personnel will wear protective clothing and will be required to wear personnel monitoring equipment including alarming dosimeters.

Since the proposed license amendment does not involve the removal of any spent fuel racks, the licensee does not plan on using divers for this project. However, if it becomes necessary to use divers to remove any interferences which may impede the installation of the new spent fuel racks, the licensee will equip each diver with the appropriate monitoring equipment. The licensee will monitor and control work, personnel traffic, and equipment movement in the SFP area to minimize contamination and to assure that exposure is maintained ALARA.

On the basis of its review of the HNP proposal, the staff concludes that the increase in spent fuel storage capacity at HNP can be accomplished in a manner that will ensure that doses to workers will be maintained ALARA.

Accident Considerations

In its application, the licensee evaluated the possible consequences of fuel handling accidents to determine offsite doses. The proposed SFP rack installation at HNP will not affect any of the assumptions or inputs used in evaluating the dose consequences of a fuel handling accident and, therefore, will not result in an increase in the doses from a postulated fuel handling accident. The proposed action will not change the procedures or equipment used for, or the frequency of, fuel moves at HNP or fuel shipments from the Brunswick and Robinson plants. Therefore, the probability of a postulated fuel handling accident will not increase from that previously evaluated.

The staff has previously considered accidents whose consequences might exceed a fuel handling accident; that is, beyond design basis events. One such accident evaluated by the staff involves a structural failure of the SFP, resulting in loss of all contained cooling water followed by heatup and a zirconium cladding fire. The details of this severe accident are discussed in NUREG/CR–4982, entitled ''Severe Accidents in Spent Fuel Pools in Support of Generic Issue 82.'' The staff also issued NUREG/CR–5176, entitled ''Seismic Failure and Cask Drop Analysis of the Spent Fuel Pools at Two Representative Nuclear Power Plants.'' This report considers the structural integrity of the SFP and the pool response to the circumstances considered. Subsequently, the staff issued NUREG/CR–5281, ''Value/Impact Analysis of Accident Preventative and Mitigative Options for Spent Fuel Pools,'' and NUREG–1353, ''Regulatory Analysis for the Resolution of Generic Issue 82: Beyond Design Basis Accidents in Spent Fuel Pools.'' In NUREG–1353, the staff determined that no new regulatory requirements were warranted in relation to Generic Issue 82.

The staff believes that the probability of severe structural damage occurring at HNP is extremely low. This belief is based upon the Commission's requirements for the design and construction of SFPs and their contents and on the licensee's adherence to approved industry codes and standards. For example, in the HNP case, the pools are an integral part of the fuel building. The SFPs and the spent fuel storage racks are Seismic Category 1, and thus, are required to remain functional during and after a safe shutdown earthquake. In the unlikely event of a total loss of the cooling system, makeup water sources are available to replace coolant lost through evaporation or boiling. Therefore, the staff concludes that the potential for environmental impact from severe accidents is negligible.

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 offsite, 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 nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the staff concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

A ''Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel,'' NUREG–0575, Volumes 1–3, was issued by the Commission in August 1979. The finding of the FGEIS is that the environmental costs of interim storage are essentially negligible, regardless of where such spent fuel is stored. The storage of spent fuel, as evaluated in NUREG–0575, is considered to be an interim action, not a final solution to permanent disposal. One spent fuel storage alternative considered in detail in the FGEIS is the expansion of the onsite fuel storage capacity by modification of the existing SFPs. The Commission has approved numerous applications for SFP expansion. The finding in each has been that the environmental impact of such increased storage capacity is negligible. However, since there are variations in storage design and limitations caused by spent fuel already stored in the pools, the FGEIS recommended that licensing reviews be done on a case-by-case basis, to resolve plant-specific concerns.

Specific alternatives to the proposed action are discussed below.

Shipment of Fuel to a Permanent Federal Fuel Storage/Disposal Facility

Shipment of spent fuel to a high-level radioactive storage facility is an alternative to increasing the onsite spent fuel storage capacity. However, DOE's high-level radioactive waste repository is not expected to begin receiving spent fuel until approximately 2010, at the earliest. In October 1996, the Administration did commit DOE to begin storing wastes at a centralized location by January 31, 1998. However, no location has been identified and an interim federal storage facility has yet to be identified in advance of a decision on a permanent repository. Therefore, shipping spent fuel to the DOE repository is not considered an alternative to increased onsite spent fuel storage capacity at this time.

Shipment of Fuel to a Reprocessing Facility

Reprocessing of spent fuel from HNP is not a viable alternative since there are no operating commercial reprocessing facilities in the United States. Therefore, spent fuel would have to be shipped to an overseas facility for reprocessing. However, this approach has never been used and it would require approval by the Department of State as well as other entities. Additionally, the cost of spent fuel reprocessing is not offset by the salvage value of the residual uranium; reprocessing represents an added cost. Therefore, this alternative is considered unacceptable.

Reduction of Spent Fuel Generation

Improved usage of fuel and/or operation at a reduced power level would decrease the amount of fuel being stored in the pool and thus increase the amount of time before full core off-load capability is lost. With extended burnup of fuel assemblies, the fuel cycle would be extended and fewer offloads would be necessary. The licensee has already increased its fuel enrichment to 5 percent and is currently operating on 18-month refueling cycles. Operating the plant at a reduced power level would not make effective use of available resources, and would cause unnecessary economic hardship on CP&L and its customers. Therefore, reducing the amount of spent fuel generated by increasing burnup further or reducing power is not considered a practical alternative.

Alternative Creation of Additional Storage Capacity

Alternative technologies that would create additional storage capacity include rod consolidation, dry cask storage, and modular vault dry storage. Rod consolidation involves disassembling the spent fuel assemblies and storing the fuel rods from two or more assemblies in a stainless steel canister that can be stored in the spent fuel racks. Industry experience with rod consolidation is currently limited, primarily due to concerns for potential gap activity release due to rod breakage, the potential for increased fuel cladding corrosion due to some of the protective oxide layer being scraped off, and because the prolonged consolidation activity could interfere with ongoing plant operations. Dry cask storage is a method of transferring spent fuel, after storage in the pool for several years, to high capacity casks with passive heat dissipation features. After loading, the casks are stored outdoors on a seismically qualified concrete pad. Concerns for dry cask storage include the potential for fuel or cask handling accidents, potential fuel clad rupture due to high temperatures, increased land use, construction impacts, the need for additional security provisions, and high costs. Vault storage consists of storing spent fuel in shielded stainless steel cylinders in a horizontal configuration in a reinforced concrete vault. The concrete vault provides missile and earthquake protection and radiation shielding. Concerns for vault dry storage include the need for additional security provisions, increased land use, construction impacts, eventual decommissioning of the new vault, the potential for fuel or clad rupture due to high temperatures, and high cost.

The environmental impacts of the alternative technologies discussed above and the proposed action are similar.

The No-Action Alternative

As an alternative to the proposed action, the staff also 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.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for HNP.

Agencies and Persons Consulted

In accordance with its stated policy, on December 2 and 3, 1999, the staff consulted with North Carolina State officials, Mr. Richard M. Fry and Mr. Johnny James of the North Carolina Department of Environment and Natural Resources, regarding the environmental impact of the proposed action. The State officials stated that they had no objection to the finding. However, they requested that the staff hold a public meeting in Raleigh, North Carolina to discuss the license amendment review process, the results of the review for HNP's proposed amendment, and the analysis that led to this environmental assessment finding.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant 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 letter dated December 23, 1998, as supplemented by letters dated April 30, June 14, July 23, September 3, October 15, and October 29, 1999, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC.

Dated at Rockville, Maryland, this 15th day of December 1999.

For the Nuclear Regulatory Commission.

Richard P. Correia,

Chief, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–33023 Filed 12–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

Duke Power Company; Notice of Availability of the Final Supplement 2 to the Generic Environmental Impact Statement for the License Renewal of Oconee Nuclear Station, Unit Nos. 1, 2, and 3

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has published a final plant-specific Supplement 2 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (GEIS) (NUREG–1437) regarding the renewal of operating licenses DPR–38, DPR–47, and DPR–55 for an additional 20 years of operation at the Oconee Nuclear Station (ONS) Units 1, 2, and 3, respectively. ONS is located in Oconee County, South Carolina. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

In Section 9.3 of the report, the staff concludes:

> Based on (1) the analysis and findings in the Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants, NUREG–1437, (2) the ER [Environmental Report] submitted by Duke, (3) consultation with other Federal, State, and local agencies, (4) the staff's own independent review, and (5) the staff's consideration of public comments, the staff recommends that the Commission determine that the adverse environmental impacts of license renewal for Oconee Nuclear Station, Units 1, 2, and 3 are not so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable.

The final supplement to the GEIS for ONS is available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW., Washington, DC.

FOR FURTHER INFORMATION, CONTACT: Mr. James H. Wilson, Generic Issues, Environmental, Financial, and Rulemaking Branch, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Mr. Wilson can be contacted at (301) 415–1108 or by writing to: James H. Wilson, U.S. Nuclear Regulatory Commission, MS 0–11 F1, Washington, DC 20555.

Dated at Rockville, Maryland, this 9th day of December 1999.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 99–33022 Filed 12–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards and Advisory Committee on Nuclear Waste; Joint Subcommittee Meeting; Notice of Meeting

The ACRS and ACNW Joint Subcommittee will hold a meeting on January 13–14, 2000, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, January 13, 2000—8:30 a.m. until 5 p.m.

Friday, January 14, 2000—8:30 a.m. until 12 Noon

The Advisory Committee on Reactor Safeguards and Advisory Committee on Nuclear Waste Joint Subcommittee will discuss the defense-in-depth philosophy in the regulatory process, including its role in the licensing of a high-level waste repository, its role in revising the regulatory structure for nuclear reactors, and how the two applications should be related to each other. The discussion will also include the role of defense in depth in the regulation of nuclear materials applications, and other related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committees.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee; written statements will be accepted and made available to the Subcommittee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS/ACNW staff members named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding these matters.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Subcommittee's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant senior fellow, John N. Sorensen (telephone 301/415–7372) between 8 a.m. and 5:45 p.m. (EST) or by e-mail JNS@NRC.gov or staff engineer, Michael T. Markley (telephone: 301–415–6885). Persons planning to attend this meeting are urged to contact the above-named individuals one to two working days prior to the meeting to be advised of any potential changes in the proposed agenda, *etc.*, that may have occurred.

Dated: December 15, 1999.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–33019 Filed 12–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–754–MLA and ASLBP No. 00–774–02–MLA]

General Electric Company; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and Sections 2.1201 and 2.1207 of Part 2 of the Commission's Regulations, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing and, if necessary, to serve as the Presiding Officer to conduct an informal adjudicatory hearing in the following proceeding:

General Electric Company, Vallecitos Nuclear Center

The hearing, if granted, will be conducted pursuant to 10 CFR Part 2, Subpart L, of the Commission's Regulations, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' This proceeding concerns a request for hearing submitted by Tri-Valley CAREs, the Western States Legal Foundation, Save Our Sunol, and Citizens Along the Roads and Tracks. The request was filed in response to a notice of consideration by the Nuclear Regulatory Commission of a request for renewal of the 10 CFR Part 70 license for the General Electric Vallecitos Nuclear Center. The renewal application requests authorization to receive and possess special nuclear material and to use special nuclear material in research and development activities involving chemical and physical analysis. The notice of consideration of the renewal application and opportunity for hearing was published in the **Federal Register** at 64 FR 45,289 (Aug. 19, 1999).

The Presiding Officer in this proceeding is Administrative Judge Alan S. Rosenthal. Pursuant to the provisions of 10 CFR 2.722, 2.1209, Administrative Judge Thomas D. Murphy has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents, and other materials shall be filed with Judge Rosenthal and Judge Murphy in accordance with 10 CFR 2.1203. Their addresses are:

Administrative Judge Alan S. Rosenthal, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Administrative Judge Thomas D. Murphy, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Issued at Rockville, Maryland, this 15th day of December 1999.

G. Paul Bollwerk III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 99–33018 Filed 12–20–99; 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–1086

(which should be mentioned in all correspondence concerning this draft guide), is titled ''Criterion for Triggering a Review Under 10 CFR 50.80 for Non-Owner Operator Service Companies.'' This guide is being developed to provide information so that the nuclear industry and the NRC staff may have a common understanding for deciding when the use of a non-owner operating service company would require NRC review and approval.

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 February 29, 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. M.J. Davis at (301) 415–1016; 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 8th day of December 1999.

For the Nuclear Regulatory Commission.

Charles E. Ader,

Director, Program Management, Policy Development & Analysis Staff, Office of Nuclear Regulatory Research.

[FR Doc. 99–33020 Filed 12–20–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42232; File No. SR–Amex–99–38]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange LLC Amending the Exchange's Audit Committee Requirements and Notice of Filing and Order Granting Accelerated Approval of Amendments No. 1 and No. 2 Thereto

December 14, 1999.

I. Introduction

On September 20, 1999, the American Stock Exchange LLC (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change amending the Exchange's audit committee requirements.

The **Federal Register** published the proposed rule change for comment on October 13, 1999.[3] In response, the Commission received 12 comment letters.[4] On November 15, 1999 and December 9, 1999, the Exchange submitted Amendments No. 1 [5] and No. 2,[6] respectively, to the proposed rule change. This order approves the proposed rule change and grants accelerated approval to Amendments No. 1 and No. 2. The Commission is also soliciting comment on Amendments No. 1 and No. 2 to the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

In February 1999, the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (''Blue Ribbon Committee'') issued a report containing recommendations aimed at strengthening the independence of the audit committee; making the audit committee more effective; and addressing mechanisms for accountability among the audit committee, the outside auditors, and management.[7] In response to the Blue Ribbon Committee's recommendations, the Exchange proposes to amend its listing standards regarding audit committee requirements. The proposed changes cover three general areas: (1) The definition of independence; (2) the structure and membership of the audit committee; and (3) the audit committee charter.

The text of the proposed rule change, as amended by Amendments No. 1 and No. 2, is as follows. Language deleted by Amendments No. 1 and No. 2 is in brackets. Language added by Amendments No. 1 and No. 2 is in italics.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240. 19b–4.

[3] Securities Exchange Act Release No. 41981 (Oct. 6, 1999), 64 FR 55505. The Nasdaq Stock Market, Inc. and The New York Stock Exchange, Inc. have proposed rule changes relating to audit committees. *See* Securities Exchange Act Release No. 41982 (Oct. 6, 1999), 64 FR 55510 (Oct. 13, 1999) (''Nasdaq Proposal''), and Securities Exchange Act Release No. 41980 (Oct. 6, 1999), 64 FR 55514 (Oct. 13, 1999) (''NYSE Proposal'').

[4] Most commenters favored the proposed rule change but recommended certain modifications to the proposed rules. The comment letters are discussed in Section III of this order.

[5] Letter from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq-Amex Market Group, to Richard Strasser, Assistant Director, Division of Market Regulation (''Division''), Commission, dated November 12, 1999 (''Amendment No. 1''). The Exchange submitted Amendment No. 1 to require issuers listed as of the effective date of Commission approval of the proposed rule change to adopt a formal written audit committee charter within six months of the effective date of the proposed rule change. As originally filed, the proposed rule change required issuers to adopt the required charter within eighteen months of the effective date of the proposed rule change. Amendment No. 1 also states that issuers that applied for listing prior to the effective date of the proposed rule change would qualify for listing under the listing standards in force at the time of their application, and receive the same grace periods provided to currently listed issuers.

[6] Letter from Sara Nelson Bloom, Associate General Counsel, Nasdaq-Amex Market Group, to Richard Strasser, Assistant Director, Division, Commission, dated December 8, 1999 (''Amendment No. 2''). The Exchange submitted Amendment No. 2 to revise proposed Section 121B(a)(ii) of the *Amex Company Guide* to provide that the audit committee is required to oversee the independence of the outside auditor, rather than ensure the independence of the outside auditor. Amendment No. 2 also revises the Exchange's definition of immediate family found in Section 121A(c) to include sons-in-law and daughters-in-law. Finally, Amendment No. 2 corrects a technical error in proposed Section 121B(b)(ii) by replacing a reference to Rule 4200 with a reference to Section 121A.

[7] *Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (1999).* A copy of this Report can be found on-line at www.nasdaqnews.com.

Section 121. INDEPENDENT DIRECTORS AND AUDIT COMMITTEE

A. Independent Directors:

The Exchange requires that domestic listed companies have a sufficient number of independent directors to satisfy the audit committee requirement set forth below. Independent directors are not officers of the company and are, in the view of the company's board of directors, free of any relationship that would interfere with the exercise of independent judgment. The following persons shall not be considered independent:

(a) A director who is employed by the corporation or any of its affiliates for the current year or any of the past three years;

(b) A director who accepts any compensation from the corporation or any of its affiliates in excess of $60,000 during the previous fiscal year, other than compensation for board service, benefits under a tax-qualified retirement plan, or non-discretionary compensation;

(c) A director who is a member of the immediate family of an individual who is, or has been in any of the past three years, employed by the corporation or any of its affiliates as an executive officer. Immediate family includes a person's spouse, parents, children, siblings, mother-in-law, father-in-law, brother-in-law, sister-in-law, *son-in-law, daughter-in-law,* and anyone who resides in such person's home;

(d) A director who is a partner in, or a controlling shareholder or an executive officer of, any for-profit business organization to which the corporation made, or from which the corporation received, payments (other than those arising solely from investments in the corporation's securities) that exceed 5% of the corporation's or business organization's consolidated gross revenues for that year, or $200,000, whichever is more, in any of the past three years;

(e) A director who is employed as an executive of another entity where any of the company's executives serve on that entity's compensation committee.

B. Audit Committee:

(a) Charter

Each Issuer must certify that it has adopted a formal written audit committee charter and that the Audit Committee has reviewed and reassessed the adequacy of the formal written charter on an annual basis. The charter must specify the following:

(i) the scope of audit committee's responsibilities, and how it carries out those responsibilities, including structure, processes, and membership requirements;

(ii) the audit committee's responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the company, consistent with Independence Standards Board Standard 1, and the audit committee's responsibility for actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to [ensure] *oversee* the independence of the outside auditor; and

(iii) the outside auditor's ultimate accountability to the board of directors and the audit committee, as representatives of shareholders, and these shareholder representatives' ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement).

(b) Composition

(i) Each issuer must have, and certify that it has and will continue to have, an audit committee of at least three members, comprised solely of independent directors, each of whom is able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement or will become able to do so within a reasonable period of time after his or her appointment to the audit committee. Additionally, each issuer must certify that it has, and will continue to have, at least one member of the audit committee that has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

(ii) Notwithstanding paragraph (i), one director who is not independent as defined in [Rule 4200] *Season 121A,* and is not a current employee or an immediate family member of such employee, may be appointed to the audit committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, and the board discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination.

(iii) Exception for Small Business Filers—Paragraphs (b)(i) and (b)(ii) do not apply to issuers that file reports under SEC Regulation S–B. Such issuers must establish and maintain an Audit Committee of at least two members, a majority of the members of which shall be independent directors.

B. Independence

The Exchange proposes to narrow its current definition of ''independent director'' by specifying five new relationships that could repair a director's independent judgment as a result of financial, familial, or other material ties to management or the corporation. The proposed definition will apply to all directors, not just those serving on audit committees. Under the proposed rule change, directors with any of the following five relationships will not be considered independent: (1) Employment by the corporation or any of its affiliates for the current year or any of the past three years; (2) acceptance of any compensation from the corporation or any of its affiliates in excess of $60,000 during the previous fiscal year, other than compensation for board service, benefits under a tax-qualified retirement plan, or non-discretionary compensation; (3) member of the immediate family of an individual who is, or has been in any of the past three years, employed by the corporation or any of its affiliates as an executive officer; (4) partnership in, or a controlling shareholder or an executive officer, or any for-profit business organization to which the corporation made, or from which the corporation received, payments (other than those arising solely from investments in the corporation's securities) that exceed five percent of the corporation's or business organization's consolidated gross revenues for that year, or $200,000, whichever is more, in any of the past three years; or (5) employment as an executive of another entity where any of the company's executives serve on that entity's compensation committee.

C. Structure and Membership of the Audit Committee

The Exchange also proposes to change the structure and membership qualifications of the audit committee. Specifically, the Exchange proposes to change the required composition of the audit committee from at least two to at

least three members. Furthermore, the audit committee must be comprised solely of independent directors rather than a majority of independent directors. The Exchange is conscious of the fact that, in exceptional circumstances, issuers may appropriately conclude that it would be in the best interests of the corporation for a non-independent director to serve on the audit committee. In such exceptional and limited circumstances, a non-independent director can serve on the audit committee, provided that the board determines that it is required by the best interests of the corporation and its shareholders, and the board discloses its reasons for the determination in the next annual proxy statement. Due to the nature of this exception, however, a corporation could have no more than one non-independent director serving on its audit committee. Also, current employees or officers, or their immediate family members, may not serve on the audit committee under this exception.

As a result of the audit committee's responsibility for a corporation's accounting and financial reporting, the Exchange believes that audit committee members should have a basic understanding of financial statements. Therefore, the proposed rule change requires each member of the audit committee to be able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement, or become able to do so within a reasonable period of time after his or her appointment to the audit committee. Furthermore, in order to further enhance the effectiveness of the audit committee, at least one member of the audit committee must have past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background that results in the individuals' financial sophistication, including being or having been a chief executive officer, chief financial officer, or other senior officer with financial oversight responsibilities.

The Exchange is sensitive to the potential burden that the proposed changes to the audit committee composition requirements may place on small companies. Therefore, the Exchange proposes to exempt those corporations that file under SEC Regulation S–B from these proposed changes (''Small Business Filers'').[8] Small Business Filers will be held to the existing Exchange requirements with respect to audit committee composition, that is, they must maintain an audit committee of at least two members, a majority of whom are independent.

D. Charter

The Exchange believes that a written charter will help the audit committee as well as management and the corporation's auditors recognize the function of the audit committee and the relationship among these parties. The proposed rule change requires each issuer to adopt a formal written charter. This charter must specify the scope of the audit committee's responsibilities, and how the committee carriers out those responsibilities, including structure, processes, and membership requirements. In addition, the charter must specify the audit committee's responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the company, consistent with Independence Standards Board Standard 1.[9] The charter must specify the audit committee's responsibility for actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to oversee the independence of the outside auditor. Finally, it must specify the outside auditor's ultimate accountability to the board of directors and the audit committee, as representatives of shareholders, and these shareholder representatives' ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate an outside for shareholder approval in any proxy statement). The proposed rule change requires issuers to review their charter on an annual basis.

E. Implementation

In order to minimize disruption to existing issuer audit committees, to permit current audit committee members to serve out their terms, and to allow adequate time to recruit the requisite members, the Exchange proposes to provide its issuers listed as of the effective date of the proposed rule change eighteen months after the proposed rule change is approved by the Commission to meet the audit committee structure and membership requirements.

Additionally, the Exchange proposes that issuers listed as of the effective date of the rule change be provided six months following the date of Commission approval of the proposed rule change to adopt a formal written audit committee charter as required by proposed Section 121(B)(a) of the *Amex Company Guide.*[10]

Further, for issuers that applied for listing prior to the effective date of the proposed rule change, the Exchange proposes that they be able to qualify for listing under the listing standards in force at the time of their application, and to receive the same grace periods provided to currently listed issuers, as described above. Also, in order to avoid prejudicing issuers that transfer to the Exchange from Nasdaq and the New York Stock Exchange, the Exchange proposes that these issuers be afforded the same grace periods they would have received under their previous market's implementation schedule.

III. Comments

As of December 9, 1999, the Commission received 12 comment letters on the proposed rule change.[11] In general, the commenters favored the proposed rule change but recommended certain modifications. One commenter stated that it does not support the new rules.[12]

In particular, the CII supports the new requirements, but stated that the proposed override provision, which allows a company's board to include a non-independent director on the audit committee is not appropriate because companies should not have a problem

[8] Small Business Filer is defined by Regulation S–B as an issuer that: (i) has revenue of less than $25,000,000; (ii) is a U.S. or Canadian issuer; and (iii) if a majority owned subsidiary, the parent corporation is a small business issuer. 17 CFR 228.10(a)(1).

[9] Independence Standard No. 1, Independence Discussions with Audit Committees (January 1999), which can be found on-line at www.cpaindependence.org.

[10] *See* Amendment No. 1, *supra* n.5.

[11] *See* letters from: Ernst & Young LLP (''E&Y'') dated November 1, 1999; Dorsey & Whitney LLP (''Dorsey'') (on behalf of nine closed-end investment management companies whose stock is listed on the Exchange) dated October 28, 1999; Deloitte & Touche LLP (''Deloitte'') dated November 3, 1999; Council of Institutional Investors (''CII'') dated November 8, 1999; Brian T. Borders on behalf of the National Venture Capital Association (''NVCA'') dated November 12, 1999; Investment Company Institute (''ICI'') dated November 3, 1999; American Federation of Labor and Congress of Industrial Organizations (''AFL–CIO'') dated November 29, 1999; Mayer, Brown & Platt on behalf of Morgan Stanley Dean Witter (''MSDW'') dated November 29, 1999; Association of Publicly Traded Companies (''APTC'') dated December 6, 1999; Robert A. Profusek (''Profusek'') dated December 3, 1999; Stanley Keller and Richard Rowe (''Keller and Rowe'') dated December 7, 1999; and The Committee on Securities Regulation of the Business Law Section of the New York State Bar Association (''NYSBA'') dated December 1, 1999.

[12] APTC Letter at 2.

finding financially literate, truly independent directors.[13] In addition, the AFL–CIO stated that the restriction period for former employees, or relatives of former employees, should be five years instead of three years.[14] The AFL–CIO also stated that the $60,000 threshold to disqualify a candidate because of a significant relationship is not stringent enough.[15] Another commenter, on the other hand, stated that a quantitative test is too inflexible.[16] Keller and Rowe stated that former non-executive employment should be treated as a significant business relationship.[17] Keller and Rowe also stated that consultants who receive from the company more than a *de minimis* amount of compensation should be treated as employees, while consultants who do not should be treated as having a business relationship with the company.[18] According to this comment letter, the company's board should be permitted to determine that the compensation does not impair the director's objectivity. Keller and Rowe also objected to the financial expertise requirement and stated that no director will want to be designated the financial expert because of the added exposure to liability.[19]

Deloitte stated that requiring a company's board or audit committee to ''ensure'' the independence of the outside auditor goes beyond what can reasonably be expected of the board and the audit committee in their oversight role.[20] Deloitte suggested that the Exchange replace the word ''ensure'' with ''monitor'' or ''actively oversee.''[21] E&Y supported the proposed rule change, but stated that the Exchange should not exempt Small Business Filers from the financial literacy and expertise requirements and also should expand its definition of immediate family member to include sons-in-law and daughters-in-law.[22] NYSBA stated that the company's board should be required to adopt the audit committee charter, rather than the audit committee adopting the charter subject to board approval.[23] NYSBA also opposed requiring the audit committee to evaluate and reassess the adequacy of the audit committee on an annual basis because there is no standard to measure the adequacy of the charter.[24]

APTC stated that the proposed rule change will be counter productive to the goal of better audit committees.[25] In addition, APTC stated that the proposed rule chnage will disadvantage smaller companies more than larger companies, but concluded that it is appropriate to apply the proposed change to all companies, regardless of size.[26] Moreover, APTC is opposed to the proposal's financial literacy requirement.[27] APTC believes that the financial literacy requirement may deprive audit committees of the service of individuals with ''exceptional character and/or operation experience.''[28] The commenter suggested that the Exchange replace this requirement with a requirement that the committee as a whole possess a certain level of financial acumen.[29]

In addition, the NVCA stated that the proposed rule change should exclude venture capital investors from the independence qualifications.[30] The NVCA also stated that the proposed rule change should give companies that have just completed an initial public offering eighteen months to comply with the new requirements and that the exemption for Small Business Filers should be expanded to apply to companies with less than $50 million in revenue.[31]

Finally, three commenters stated that the proposed rule change should not apply to closed-end investment companies.[32] ICI and MSDW noted that closed-end investment companies are adequately regulated under the 1940 Act.[33] These two commenters also stated that the potential abuses that the proposed rule change is designed to address do not exist with respect to closed-end investment funds, because the assets of closed-end funds consist exclusively of investment securities and thus there is no opportunity to ''manage'' earnings or results through the selective application of accounting policies.[34]

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[35] and, in particular, the requirements of Section 6(b)(5) of the Act.[36] The Commission believes that the proposed rule change will protect investors by improving the effectiveness of audit committees of companies listed on the Exchange. The Commission also believes that the new requirements will enhance the reliability and credibility of financial statements of companies to inappropriately distort their true financial performance. Further, the Commission also notes that the Exchange is amending its own listing standards, which is a function within the Exchange's discretion, as long as those changes are consistent with the Act.

Specifically, the Commission believes that the proposed definition of independence will promote the quality and reliability of a company's financial statements. The Commission believes that directors without financial, familial, or other material personal ties to management will be more likely to objectively evaluate the propriety of management's accounting, internal control, and financial reporting practices. For these reasons, the Commission believes that the proposal's prohibition against employees serving on the audit committee is appropriate and that the Exchange should not be required to distinguish between executive and non-executive employees.[37]

The Commission also believes that the proposed provision that permits a company to appoint one director to its audit committee who is not independent, if the board determines that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, adequately balances the need for objective, independent directors with the company's need for flexibility in exceptional and unusual

[13] CII Letter, at 2; *see also* AFL–CIO Letter at 2.

[14] AFL–CIO Letter at 2.

[15] *Id.*

[16] Profusek Letter at 2. In addition, Keller and Rowe stated that this provision might preclude a number of highly qualified candidates from serving on audit committees. Keller and Rowe Letter at 3.

[17] Keller and Rowe Letter at 2.

[18] *Id.* at 3.

[19] *Id.*; *see also* NYSBA Letter at 6.

[20] Deloitte Letter, at 1.

[21] *Id.* at 2.

[22] E&Y Letter at 4.

[23] NYSBA Letter at 2.

[24] *Id.* at 4–5.

[25] APTC Letter at 2.

[26] *Id.* at 3.

[27] *Id.* at 4–5.

[28] *Id.*

[29] *Id.* at 5.

[30] NVCA Letter at 5.

[31] *Id.* at 4.

[32] ICI Letter at 2; MSDW Letter at 1; Keller and Rowe letter at 5. In addition, Keller and Rowe stated that the proposed rule change should exempt all investment companies because their audit committee members are already required not to be ''interested persons'' as that term is defined in Section 2(a)(9) of the Investment company Act of 1940 (''1940 Act''). Moreover, Dorsey supported the application of the proposed rule change to investment companies. Dorsey Letter at 3.

[33] ICI Letter at 3–4; MSDW Letter at 2.

[34] ICI Letter at 3; MSDW letter at 1. ICI and MSDW also noted that the independent accountants of investment funds are selected by the independent directors of the fund.

[35] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[36] 15 U.S.C. 78f(b)(5).

[37] *See* Keller and Rowe Letter at 2.

circumstances. The Commission believes that the requirement that the company disclose in its next proxy statement the nature of the director's relationship to the issuer and the board's reasons for determining the appointment was in the best interests of the corporation will adequately guard against abuse of the proposed exception to the independence requirement. Moreover, the Commission believes that the $60,000 threshold to determine if a potential audit committee director has a significant business relationship with the company is a reasonable measure to balance the company's need to recruit audit committee members with the independence requirement.[38]

The Commission does not believe that venture capital investors should be excluded from the Exchange's definition of independence. The Commission does not view the proposed rule change as posing an undue hardship on venture capital firms or companies listed on the Amex. The Commission notes that the proposed rule change will only prohibit venture capital investors from sitting on a company's audit committee if the investor does not fall within the Exchange's definition of independent. The proposed rule change will not prohibit previously eligible investors from serving on the company's board. The Commission also notes that a venture capital investor that is not considered independent may serve on the company's audit committee, if the board determines it is in the best interests of the corporation and its shareholders and the company discloses its reasons for the determination and the nature of the director's relationship to the company in its next annual proxy statement.

In addition, the Commission believes that requiring companies to adopt formal written charters specifying the audit committee's responsibilities, and how it carries out those responsibilities, will help the audit committee, management, investors, and the company's auditors recognize the function of the audit committee and the relationship among the parties. Moreover, the Commission believes that requiring the charter to specify that the audit committee is responsible for taking, or recommending that the company's full board take, appropriate action to oversee the independence of the outside auditor will make it more likely that companies will select objective, unbiased auditors.

The Commission believes that the proposed rule change's compositional requirement that each issuer have an audit committee composed of three independent directors who are able to read and understand fundamental financial statements will enhance the effectiveness of the audit committee and help to ensure that audit committee members are able to adequately fulfill their responsibilities. The Commission believes that requiring each audit committee member to satisfy this standard will help to ensure that the committee as a whole is financially literate.[39] Moreover, the Commission considers that requiring one member of the audit committee to have past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background that indicates the individual's financial sophistication, will further enhance the effectiveness of the audit committee in carrying out its financial oversight responsibilities. In addition, the Commission does not believe that companies will experience undue difficulty recruiting an audit committee member that satisfies the financial expertise requirements. Moreover, the Commission believes that the proposed rule change appropriately exempts Small Business Filers from the proposed composition requirements because these companies may experience more difficulty meeting these enhanced requirements. The Commission notes that these companies will remain subject to existing Exchange rules on audit committees, which require an audit committee to have at least two members, a majority of whom are independent.

Moreover, the Commission has concluded that the Exchange's decision to include investment companies in the proposed rule change is warranted. While the Commission recognizes that the opportunity for some types of financial reporting abuses may be limited by the nature of fund assets,[40] it believes that audit committee do play an important role in overseeing the financial reporting process for investment companies.

The Commission finds good cause for approving Amendments No. 1 and No. 2 to the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that Amendment No. 1 revises the implementation time periods for the proposed rule change solely to provide greater clarity to issuers and to investors. The Commission believes that Amendment No. 1 will enable issuers to determine when they must comply with the new requirements and will enable investors to determine when to rely on the protections afforded by the proposed rule change. The Commission notes that Amendment No. 2 simply clarifies that the audit committee is required to oversee, rather than ensure, the independence of the company's outside auditors; makes a technical correction to section 121A; and expands the Exchange's definition of ''immediate family.'' The Commission believes that accelerated approval will allow the Exchange to simultaneously make all relevant modifications to the *Amex Company Guide* and will avoid potential confusion. Accordingly, the Commission finds good cause to accelerate approval of Amendments No. 1 and No. 2 to the proposed rule change, consistent with sections 6(b)(5)[41] and 19(b)[42] of the Act.

V. 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, NW., Washington, DC 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 Co9mmission and any persons, 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 will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR–Amex–99–38 and should be submitted by January 11, 2000

VI. Conclusion

For the foregoing reasons, the Commission finds that the Exchange's proposal to amend its audit committee requirements is consistent with the requirements of the Act and the rule and regulations thereunder.

[38] The Commission does not believe that the Exchange should require its listed companies to adopt a separate provision on consultants. *See* Keller and Rowe Letter at 3.

[39] *See* APTC Letter at 5.

[40] *See* Keller and Rowe Letter at 5; ICI Letter at 3; MSDW Letter at 1.

[41] 15 U.S.C. 78f(b)(5).

[42] 15 U.S.C. 78s(b).

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[43] that the amendment proposed rule change (SR–Amex–99–38) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[44]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33051 Filed 12–20–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42231; File No. SR–NASD–99–48]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Amending Its Audit Committee Requirements and Notice of Filing and Order Granting Accelerated Approval of Amendments No. 1 and No. 2 Thereto

December 14, 1999.

I. Introduction

On September 20, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change amending Nasdaq's audit committee requirements.

The **Federal Register** published the proposed rule change for comment on October 13, 1999.[3] In response, the Commission received fourteen comment letters. On November 15, 1999 and December 9, 1999, the Association submitted Amendments No. 1 [4] and No. 2,[5] respectively, to the proposed rule change. This order approves the proposed rule change and grants accelerated approval to Amendments No. 1 and No. 2. The Commission is also soliciting comment on Amendments No. 1 and No. 2 to the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

In February 1999, the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (''Blue Ribbon Committee'') issued a report containing recommendations aimed at strengthening the independence of the audit committee; making the audit committee more effective; and addressing mechanisms for accountability among the audit committee, the outside auditors, and management.[6] In response to the Blue Ribbon Committee's recommendations, Nasdaq proposes to amend its listing standards regarding audit committee requirements. The proposed changes cover three general areas: (1) The definition of independence; (2) the structure and membership of the audit committee; and (3) the audit committee charter.

The text of the proposed rule change, as amended by Amendments No. 1 and No. 2, is as follows. Language deleted by Amendments No. 1 and No. 2 is in brackets. Language added by Amendments No. 1 and No. 2 is in italics.

Rule 4200. Definitions

(a) For purposes of the Rule 4000 Series, unless the context requires otherwise:

(1)–(14) No change.

(15) ''Independent director'' means a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which, in the opinion of the company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. The following persons shall not be considered independent:

(a) a director who is employed by the corporation or any of its affiliates for the current year or any of the past three years;

(b) a director who accepts any compensation from the corporation or any of its affiliates in excess of $60,000 during the previous fiscal year, other than compensation for board service, benefits under a tax-qualified retirement plan, or non-discretionary compensation;

(c) a director who is a member of the immediate family of an individual who is, or has been in any of the past three years, employed by the corporation for any of its affiliates as an executive officer. Immediate family includes a person's spouse, parents, children, siblings, mother-in-law, father-in-law, brother-in-law, sister-in-law, *son-in-law, daughter-in law,* and anyone who resides in such person's home;

(d) a director who is a partner in, or a controlling shareholder or an executive officer, of, any for-profit business organization to which the corporation made, or from which the corporation received, payments (other than those arising solely from investments in the corporation's securities) that exceed 5% of the corporation's or business organization's consolidated gross revenues for that year, or $200,000, whichever is more, in any of the past three years;

(e) a director who is employed as an executive of another entity where any of the company's executive's serve on that entity's compensation committee.

(15)–(36) renumbered as (16)–(37).

(b) No change.

Rule 4310. Qualification Requirements for Domestic and Canadian Securities

To qualify for inclusion in Nasdaq, a security of a domestic or Canadian issuer shall satisfy all applicable requirements contained in paragraphs (a) or (b), and (c) hereof.

(a)–(b) No change.

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[43] 15 U.S.C. 78s(b)(2).

[44] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41982 (Oct. 6, 1999), 64 FR 55510. The American Stock Exchange LLC and The New York Stock Exchange, Inc. have proposed rule changes relating to audit committees. *See* Securities Exchange Act Release No. 41981 (Oct. 6, 1999), 64 FR 55505 (Oct. 13, 1999) (''Amex Proposal''), and Securities Exchange Act Release No. 41980 (Oct. 6, 1999), 64 FR 55514 (Oct. 13, 1999) (''NYSE Proposal'').

[4] Letter from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq-Amex Market Group, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated November 12, 1999 (''Amendment No. 1''). The Association submitted Amendment No. 1 to require issuers listed as of the effective date of Commission approval of the proposed rule change to adopt a formal written audit committee charter within six months of the effective date of the proposed rule change. As originally filed, the proposed rule change required issuers to adopt the charter within eighteen months of the effective date of the proposed rule change. Amendment No. 1 also states that issuers that applied for listing prior to the effective date of the proposed rule change would qualify for listing under the listing standards in force at the time of their application, and receive the same grace periods provided to currently listed issuers. Finally, Amendment No. 1 modifies proposed Rule 4320(e)(21) to provide that the requirement that each issuer execute a listing agreement will not be construed to require any foreign issuer to do any act that is contrary to a law of any public authority exercising jurisdiction over the foreign issuer.

[5] Letter from Sara Nelson Bloom, Associate General Counsel, Nasdaq-Amex Market Group, to Richard Strasser, Assistant Director, Division, Commission, dated December 8, 1999 (''Amendment No. 2''). The Association submitted Amendment No. 2 to revise proposed Rules 4310(c)(26)(A)(ii), 4320(e)(22)(A)(ii), and 4460(d)(1)(B) to provide that the audit committee is required to oversee the independence of the outside auditor, rather than ensure the independence of the outside auditor. Amendment No. 2 also revises Nasdaq's definition of immediate family found in Rule 4200(a)(15)(c) to include sons-in-law and daughters-in-law.

[6] *Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (1999).* A copy of this Report can be found on-line at www.nasdaqnews.com.

(c) In addition to the requirements contained in paragraph (a) or (b) above, and unless otherwise indicated, a security shall satisfy the following criteria for inclusion in Nasdaq:

(1)–(24) No change.

(25) Corporate Governance Requirements.

* * * * *

(A) No change.

(B) Independent Directors.

Each issuer shall maintain a sufficient number of independent directors on its board of directors to satisfy the audit committee requirement set forth in Rule 4310(c)(26)(B).

(D)–(H) renumbered as (C)–(G).

(26) *Audit Committee.*

(A) Audit Committee Charter.

Each Issuer must certify that it has adopted a formal written audit committee charter and that the Audit Committee has reviewed and reassessed the adequacy of the formal written charter on an annual basis. The charter must specify the following:

(i) the scope of the audit committee's responsibilities, and how it carries out those responsibilities, including structure, processes, and membership requirements;

(ii) the audit committee's responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the company, consistent with Independence Standards Board Standard 1, and the audit committee's responsibility for actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to [ensure] *oversee* the independence of the outside auditor; and

(iii) the outside auditor's ultimate accountability to the board of directors and the audit committee, as representatives of shareholders, and these shareholder representatives' ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement).

(B) Audit Committee Composition.

(i) Each issuer must have, and certify that it has and will continue to have, an audit committee of at least three members, comprised solely of independent directors, each of whom is able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement or will become able to do so within a reasonable period of time after his or her appointment to the audit committee. Additionally, each issuer must certify that it has, and will continue to have, at least one member of the audit committee that has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

(ii) Notwithstanding paragraph (i), one director who is not independent as defined in Rule 4200, and is not a current employee or an immediate family member of such employee, may be appointed to the audit committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, and the board discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination.

(iii) Exception for Small Business Filers—Paragraphs (B)(i) and (B)(ii) do not apply to issuers that file reports under SEC Regulation S–B. Such issuers must establish and maintain an Audit Committee of at least two members, a majority of the members of which shall be independent directors.

(26)–(28) renumbered as (27)–(29).

(d) No change.

Rule 4320. Qualification Requirements for Non-Canadian Foreign Securities and American Depositary Receipts

To qualify for inclusion in Nasdaq, a security of a non-Canadian foreign issuer, an American Depositary Receipt (ADR) or similar security issued in respect of a security of a foreign issuer shall satisfy the requirements of paragraphs (a), (b) or (c), and (d) and (e) of this Rule.

(a)–(d) No change.

(e) In addition to the requirements contained in paragraphs (a), (b) or (c), and (d), the security shall satisfy the following criteria for inclusion in Nasdaq:

(1)–(20) No change.

(21) Corporate Governance Requirements—No provisions of this subparagraph or of subparagraph (24) shall be construed to require any foreign issuer to do any act that is contrary to a law, rule or regulation of any public authority exercising jurisdiction over such issuer or that is contrary to generally accepted business practices in the issuer's country of domicile. Nasdaq shall have the ability to provide exemptions from the applicability of these provisions as may be necessary or appropriate to carry out this intent.

Nasdaq shall review the issuer's past corporate governance activities. This review may include activities taking place while the issuer is listed on Nasdaq or an exchange that imposes corporate governance requirements, as well as activities taking place after the issuer is no longer listed on Nasdaq or an exchange that imposes corporate governance requirements. Based on such review, Nasdaq may take any appropriate action, including placing of restrictions on or additional requirements for listing, or the denial of listing of a security if Nasdaq determines that there have been violations or evasions of such corporate governance standards. Determinations under this subparagraph shall be made on a case-by-case basis as necessary to protect investors and the public interest.

(A) No change.

(B) Independent Directors.

Each issuer shall maintain a sufficient number of independent directors on its board of directors to satisfy the audit committee requirement set forth in Rule 4320(e)(22)(B).

(D)–(H) renumbered as (C)–(G).

(22) Audit Committee.

(A) Audit Committee Charter.

Each Issuer must certify that it has adopted a formal written audit committee charter and that the Audit Committee has reviewed and reassessed the adequacy of the formal written charter on an annual basis. The charter must specify the following:

(i) the scope of the audit committee's responsibilities, and how it carries out those responsibilities, including structure, processes, and membership requirements;

(ii) the audit committee's responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the company, consistent with Independence Standards Board Standard 1, and the audit committee's responsibility for actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to [ensure] *oversee* the independence of the outside auditor; and

(iii) the outside auditor's ultimate accountability to the board of directors and the audit committee, as representatives of shareholders, and these shareholder representatives' ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement).

(B) Audit Committee Composition.

(i) Each issuer must have, and certify that it has and will continue to have, an audit committee of at least three members, comprised solely of independent directors, each of whom is able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement or will become able to do so within a reasonable period of time after his or her appointment to the audit committee. Additionally, each issuer must certify that it has, and will continue to have, at least one member of the audit committee that has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

(ii) Notwithstanding paragraph (i), one director who is not independent as defined in Rule 4200, and is not a current employee or an immediate family member of such employee, may be appointed to the audit committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, and the board discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination.

(iii) Exception for Small Business Filers—Paragraphs (B)(i) and (B)(ii) do not apply to issuers that file reports under SEC Regulation S–B. Such issuers must establish and maintain an Audit Committee of at least two members, a majority of the members of which shall be independent directors.

(22)–(24) renumbered as (23)–(25).

(f) No change.

Rule 4460. Non-Quantitative Designation Criteria for Issuers Excepting Limited Partnerships

(a)–(b) No change.

(c) Independent Directors.

Each NNM issuer shall maintain a sufficient number of independent directors on its board of directors to satisfy the audit committee requirement set forth in Rule 4460(d)(2).

(d) Audit Committee.

(1) Audit Committee Charter.

Each Issuer must certify that it has adopted a formal written audit committee charter and that the Audit Committee has reviewed and reassessed the adequacy of the formal written charter on an annual basis. The charter must specify the following:

(A) the scope of the audit committee's responsibilities, and how it carries out those responsibilities, including structure, processes, and membership requirements;

(B) the audit committee's responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the company, consistent with Independence Standards Board Standard 1, and the audit committee's responsibility for actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to [ensure] *oversee* the independence of the outside auditor; and

(C) the outside auditor's ultimate accountability to the board of directors and the audit committee, as representatives of shareholders, and these shareholder representatives' ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement).

(2) Audit Committee Composition.

(A) Each issuer must have, and certify that it has and will continue to have, an audit committee of at least three members, comprised solely of independent directors, each of whom is able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement or will become able to do so within a reasonable period of time after his or her appointment to the audit committee. Additionally, each issuer must certify that it has, and will continue to have, at least one member of the audit committee that has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

(B) Notwithstanding paragraph (i), one director who is not independent as defined in Rule 4200, and is not a current employee or an immediate family member of such employee, may be appointed to the audit committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, and the board discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination.

(C) Exception for Small Business Filers—Paragraphs (2)(A) and (2)(B) do not apply to issuers that file reports under SEC Regulation S–B. Such issuers must establish and maintain an Audit Committee of at least two members, a majority of the members of which shall be independent directors.

(e)–(n) No change.

B. Independence

Nasdaq proposes to narrow its current definition of ''independent director'' by specifying five new relationships that could impair a director's independent judgment as a result of financial, familial, or other material ties to management or the corporation. The proposed definition will apply to all directors, not just those serving on audit committees. Under the proposed rule change, directors with any of the following five relationships will not be considered independent: (1) Employment by the corporation or any of its affiliates for the current year or any of the past three years; (2) acceptance of any compensation from the corporation of any of its affiliates in excess of $60,000 during the previous fiscal year, other than compensation for board service, benefits under a tax-qualified retirement plan, or non-discretionary compensation; (3) member of the immediate family of an individual who is, or has been in any of the past three years, employed by the corporation or any of its affiliates as an executive officer; (4) partnership in, or a controlling shareholder or an executive officer of, any for-profit business organization to which the corporation made, or from which the corporation received, payments (other than those arising solely from investments in the corporation's securities) that exceed five percent of

the corporation's or business organization's consolidated gross revenues for that year, or $200,000, whichever is more, in any of the past three years; or (5) employment as an executive of another entity where any of the company's executives serve on that entity's compensation committee.

C. Structure and Membership of the Audit Committee

Nasdaq also proposes to change the structure and membership qualifications of the audit committee. Specifically, Nasdaq proposes to change the required composition of the audit committee from at least two to at least three members. Furthermore, the audit committee must be comprised solely of independent directors rather than a majority of independent directors. Nasdaq is conscious of the fact that in exceptional circumstances, issuers may appropriately conclude that it would be in the best interests of the corporation for a non-independent director to serve on the audit committee. In such exceptional and limited circumstances, a non-independent director can serve on the audit committee, provided that the board determines that it is required by the best interests of the corporation and its shareholders, and the board discloses its reasons for the determination in the next annual proxy statement. Due to the nature of this exception, however, a corporation could have no more than one non-independent director serving on its audit committee. Also, current employees or officers, or their immediate family members, may not serve on the audit committee under this exception.

As a result of the audit committee's responsibility for a corporation's accounting and financial reporting, Nasdaq believes that audit committee members should have a basic understanding of financial statements. Therefore, the proposed rule change requires each member of the audit committee to be able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement, or become able to do so within a reasonable period of time after his or her appointment to the audit committee. Furthermore, in order to further enhance the effectiveness of the audit committee, at least one member of the audit committee must have past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer, or other senior officer with financial oversight responsibilities.

Nasdaq is sensitive to the potential burden that the proposed changes to the audit committee composition requirements may place on small companies. Therefore, Nasdaq proposes to exempt those corporations that file under SEC Regulation S–B (''Small Business Filers'').[7] Small Business Filers will be held to Nasdaq's existing requirements with respect to audit committee composition. That is, they must maintain an audit committee of at least two members, a majority of whom are independent.

D. Charter

Nasdaq believes that a written charter will help the audit committee as well as management and the corporation's auditors recognize the function of the audit committee and the relationship among these parties. The proposed rule change requires each issuer to adopt a formal written charter. This charter must specify the scope of the audit committee's responsibilities, and how it carries out those responsibilities, including structure, processes, and membership requirements. In addition, the charter must specify the audit committee's responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the company, consistent with Independence Standards Board Standard 1.[8] The charter must also specify the audit committee's responsibility for actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to oversee the independence of the outside auditor. Finally, it must specify the outside auditor's ultimate accountability to the board of directors and the audit committee, as representatives of shareholders, and these shareholder representatives' ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate an outside auditor for shareholder approval in any proxy statement). The proposed rule change requires issuers to review their charter on an annual basis.

E. Implementation

In order to minimize disruption to existing issuer audit committees, to permit current audit committee members to serve out their terms, and to allow adequate time to recruit the requisite members, Nasdaq proposes to provide its issuers listed as of the effective date of the proposed rule change eighteen months after the proposed rule change is approved by the Commission to meet the audit committee structure and membership requirements.

Additionally, Nasdaq proposes that issuers listed as of the effective date of the rule change be provided six months following the date of Commission approval of the proposed rule change to adopt a formal written audit committee charter in compliance with proposed Rules 4310(c)(26)(A), 4320(e)(22)(A), or 4460(d)(1).

Further, for issuers that applied for listing prior to the effective date of the proposed rule change, Nasdaq proposes that they be able to qualify for listing under the listing standards in force at the time of their application, and to receive the same grace periods provided to currently listed issuers, as described above. Also, in order to avoid prejudicing issuers that transfer to Nasdaq from the American Stock Exchange and the New York Stock Exchange, Nasdaq proposed that these issuers be afforded the same grace periods they would have received under their previous market's implementation schedule.

III. Comments

As of December 9, 1999, the Commission received 14 comment letters on the proposed rule change.[9] In general, the commenters favored the

[7] Small Business Filer is defined by Regulation S–B as an issuer that: (i) has revenue of less than $25,000,000; (ii) is a U.S. or Canadian issuer; and (iii) if a majority owned subsidiary, the parent corporation is a small business issuer. 17 CFR 228.10(a)(1).

[8] Independence Standard No. 1, Independence Discussions with Audit Committees (January 1999), which can be found on-line at www.cpaindependence.org.

[9] *See* letters from: Ernst & Young LLP (''E&Y'') dated November 1, 1999; Deloitte & Touche LLP (''Deloitte'') dated November 3, 1999; Council of Institutional Investors (''CII'') dated November 8, 1999; Brian T. Borders on behalf of the National Venture Capital Association (''NVCA'') dated November 12, 1999; PricewaterhouseCoopers LLP (''Price'') dated November 1, 1999; Gary P. Kreider (''Kreider'') dated November 5, 1999; American Federation of Labor and Congress of Industrial Organizations (''AFL–CIO'') dated November 29, 1999; Mayer, Brown & Platt on behalf of Morgan Stanley Dean Witter (''MSDW'') dated November 29, 1999; Investment Company Institute (''ICI'') dated November 3, 1999; Arthur Andersen LLP (''Arthur Andersen'') dated December 3, 1999; Association of Publicly Traded Companies (''APTC'') dated December 6, 1999; Robert A. Profusek (''Profusek'') dated December 3, 1999; Stanley Keller and Richard Rowe (''Keller and Rowe'') dated December 7, 1999; and The Committee on Securities Regulation of the Business Law Section of the New York State Bar Association (''NYSBA'') dated December 1, 1999.

proposed rule change but recommended certain modifications. Two commenters opposed the proposed rule change.[10]

In particular, the CII supports the new requirements, but stated that the proposed override provision, which allows a company's board to include a non-independent director on the audit committee is not appropriate because companies should not have a problem finding financially literate, truly independent directors.[11] In addition, the AFL–CIO stated that the restriction period for former employees, or relatives of former employees, should be five years instead of three years.[12] The AFL–CIO also stated that the $60,000 threshold to disqualify a candidate because of a significant business relationship is not stringent enough.[13] Another commenter, on the other hand, stated that a quantitative test is too inflexible.[14] Keller and Rowe stated that former non-executive employment should be treated as a significant business relationship.[15] This commenter also stated that consultants who receive from the company more than a *de minimis* amount of compensation should be treated as employees, while consultants who do not should be treated as having a business relationship with the company.[16] According to this comment letter, the company's board should be permitted to determine that the compensation does not impair the director's objectivity.[17] Keller and Rowe also objected to the financial expertise requirement and stated that no director will want to be designated the financial expert because of the added exposure to liability.[18]

Deloitte and Price each stated that requiring a company's board or audit committee to ''ensure'' the independence of the outside auditor goes beyond what can reasonably be expected of the board and the audit committee in their oversight role.[19] Deloitte suggested that Nasdaq replace the word ''ensure'' with ''monitor'' or ''actively oversee.''[20] E&Y supported the proposed rule change, but stated that Nasdaq should not exempt Small Business Filers from the financial literacy and expertise requirements and also should expand its definition of immediate family member to include sons-in-law and daughters-in-law.[21] NYSBA stated that the company's board should be required to adopt the audit committee charter, rather than the audit committee adopting the charter subject to board approval.[22]

In addition, the NVCA stated that the proposed rule change should exclude venture capital investors form the independence qualifications.[23] The NVCA also stated that the proposed rule change should give companies that have just completed an initial public offering eighteen months to comply with the new requirements and that the exemption for Small Business Filers should be expanded to apply to companies with less than $50 million in revenue.[24]

APTC stated that the proposed rule change will be counter productive to the goal of better audit committees.[25] In addition, APTC stated that the proposed rule change will disadvantage smaller companies more than larger companies, but concluded that it is appropriate to apply the proposed rule change to all companies, regardless of size.[26] Moreover, APTC is opposed to the proposal's financial literacy requirement.[27] APTC believes that the financial literacy requirement may deprive audit committees of the service of individuals with ''exceptional character and/or operational experience.''[28] The commenter suggested that the Exchange replace this requirement with a requirement that the committee as a whole possess a certain level of financial acumen.[29]

Finally, two commenters stated that the proposed rule change should not apply to closed-end investment companies.[30] These commenters noted that closed-end investment companies are adequately regulated under the 1940 Act.[31] The commenters also stated that the potential abuses that the proposed rule change is designed to address do not exist with closed-end investment funds.[32] Finally, the commenters noted that because the assets of these funds consist exclusively of investment securities, there is no opportunity to ''manage'' earnings or results through selective application of accounting policies.[33]

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association,[34] and, in particular, the requirements of Section 15(A)(b)(6) of the Act.[35] The Commission believes that the proposed rule change will protect investors by improving the effectiveness of audit committees of companies listed on Nasdaq. The Commission also believes that the new requirements will enhance the reliability and credibility of financial statements of companies listed on Nasdaq by making it more difficult for companies to inappropriately distort their true financial performance.

Specifically, the Commission believes that the proposed definition of independence will promote the quality and reliability of a company's financial statements. The Commission believes that directors without financial, familial, or other material personal ties to management will be more likely to objectively evaluate the propriety of management's accounting, internal control, and financial reporting practices. The Commission believes that the proposal's prohibition against employees serving on the audit committee is appropriate and that the Exchange should not be required to distinguish between executive and non-executive employees.[36] The Commission also believes that the proposed provision that permits a company to appoint one director to its audit committee who is not independent, if the board determines that membership on the committee by the individual is required by the best interests of the corporation and its

[10] *See* Kreider Letter; APTC Letter at 2. Kreider stated that the proposed rule change ''represent[s] an awkward attempt to circumvent state corporate law and micro-manage the functions of audit committees.'' *Id.* at 2.

[11] CII Letter, at 2; *see also* AFL–CIO Letter at 2.

[12] AFL–CIO Letter at 2.

[13] *Id.*

[14] Profusek Letter at 2. In addition, Keller and Rowe stated that this provision might preclude a number of highly qualified candidates from serving on audit committees. Keller and Rowe Letter at 3.

[15] Keller and Rowe Letter at 2.

[16] *Id.* at 3.

[17] *Id.*

[18] *Id.*

[19] Deloitte Letter at 1; Price Letter at 1.

[20] *Id.* at 2.

[21] E&Y Letter at 4.

[22] NYSBA Letter at 2.

[23] NVCA Letter at 5.

[24] *Id.* at 4.

[25] APTC Letter at 2.

[26] *Id.* at 3.

[27] *Id.* at 4–5.

[28] *Id.*

[29] *Id.* at 5.

[30] ICI Letter at 2; MSDW Letter at 1. In addition, Keller and Rowe stated that the proposed rule change should exempt all investment companies because their audit committee members are already required not to be ''interested persons'' as that term is defined in Section 2(a)(9) of the Investment Company Act of 1940 (''1940 Act''). Keller and Rowe Letter at 5.

[31] ICI Letter at 3–4; MSDW Letter at 2.

[32] ICI Letter at 3; MSDW Letter at 1. ICI and MSDW also noted that the independent accountants of investment funds are selected by the independent directors of the fund.

[33] ICI Letter at 3; MSDW Letter at 1.

[34] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[35] 15 U.S.C. 78o–3(b)(6).

[36] *See* Keller and Rowe Letter at 2.

shareholders, adequately balances the need for objective, independent directors with the company's need for flexibility in exceptional and unusual circumstances. The Commission believes that the requirement that the company disclose in its next annual proxy statement the nature of the director's relationship with the company and the board's reasons for determining the appointment was in the best interests of the corporation will adequately guard against abuse of the proposed exception to the independence requirement. Moreover, the Commission believes that the $60,000 threshold to determine if a potential audit committee director has a significant business relationship with the company is a reasonable measure to balance the company's need to recruit audit committee members with the independence requirement.

The Commission does not believe that venture capital investors should be excluded from Nasdaq's definition of independence. The Commission does not believe that the proposed rule change will pose an undue hardship on venture capital firms or companies listed on Nasdaq. The Commission notes that the proposed rule change will only prohibit venture capital investors from sitting on a company's audit committee if the investor does not fall within Nasdaq's definition of independent. The proposed rule change will not prohibit previously eligible investors from serving on the company's board. The Commission also notes that a venture capital investor that is not considered independent may serve on the company's audit committee, if the board determines it is in the best interests of the corporation and its shareholders and the company discloses its reasons for the determination and the nature of the director's relationship to the company in its next annual proxy statement.

In addition, the Commission believes that requiring companies to adopt formal written charters specifying the audit committee's responsibilities, and how the committee carries out those responsibilities, will help the audit committee, management, investors, and the company's auditors recognize the function of the audit committee and the relationship among the parties. Moreover, the Commission believes that requiring the charter to specify that the audit committee is responsible for taking, or recommending that the company's full board take, appropriate action to oversee the independence of the outside auditor will make it more likely that companies will select objective, unbiased auditors.

The Commission believes that the proposed rule change's compositional requirement that each issuer have an audit committee composed of three independent directors who are able to read and understand fundamental financial statements will enhance the effectiveness of the audit committee and help to ensure that audit committee members are able to adequately fulfill their responsibilities. The Commission believes that requiring each audit committee member to satisfy this standard will help to ensure that the committee as a whole is financially literate.[37] Moreover, the Commission considers that requiring one member of the audit committee to have past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background that indicates the individual's financial sophistication, will further enhance the effectiveness of the audit committee in carrying out its financial oversight responsibilities. In addition, the Commission does not believe that companies will experience undue difficulty recruiting an audit committee member that satisfies the financial expertise requirements. Moreover, the Commission believes that the proposed rule change appropriately exempts Small Business Filers from the proposed composition requirements because these companies may experience more difficulty meeting these enhanced requirements. The Commission notes that these companies will remain subject to Nasdaq's existing rules on audit committees, which require an audit committee to have at least two members, a majority of whom are independent.

Moreover, the Commission does not believe that the proposed rule change circumvents state law.[38] The Commission notes that Nasdaq is amending its own qualification requirements governing an issuer's listing on Nasdaq, which is an appropriate function for Nasdaq as long as those requirements are consistent with the Act.

Moreover, the Commission has concluded that Nasdaq's decision to include investment companies in the proposed rule change is warranted. While the Commission recognizes that the opportunity for some types of financial reporting abuses may be limited by the nature of fund assets,[39] it believes that audit committees do play an important role in overseeing the financial reporting process for investment companies.

The Commission finds good cause for approving Amendments No. 1 and No. 2 to the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that Amendment No. 1 merely revises the implementation time periods for the proposed rule change to provide greater clarity to issuers and to investors. The Commission believes that Amendment No. 1 will enable issuers to determine when they must comply with the new requirements and will enable investors to determine when to rely on the protections afforded by the proposed rule change. The Commission notes that Amendment No. 2 simply clarifies that the audit committee is required to oversee, rather than ensure, the independence of the company's outside auditors, and expands Nasdaq's definition of ''immediate family.'' The Commission believes that accelerated approval will allow Nasdaq to simultaneously make all relevant modifications to its Rules and will avoid potential confusion. Accordingly, the Commission finds good cause to accelerate approval of Amendments No. 1 and No. 2 to the proposed rule change, consistent with Sections 6(b)(5)[40] and 19(b)[41] of the Act.

V. 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, NW, Washington, DC 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 will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–99–48 and should be submitted by January 11, 2000.

[37] *See* APTC Letter at 5.

[38] Kreider Letter at 2.

[39] *See* Keller and Rowe Letter at 5; ICI Letter at 3; MSDW Letter at 1.

[40] 15 U.S.C. 78f(b)(5).

[41] 15 U.S.C. 78s(b).

VI. Conclusion

For the foregoing reasons, the Commission finds that Nasdaq's proposal to amend its audit committee requirements is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[42] that the amended proposed rule change (SR–NASD–99–48) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[43]

Jonathan G. Katz,

Secretary.

[FR Doc. 99–33050 Filed 12–20–99; 8:45 am]

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[42] 15. U.S.C. 78s(b)(2).

[43] 17. CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42233; File No. SR–NYSE–99–39]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Amending the Exchange's Audit Committee Requirements and Notice of Filing and Order Granting Accelerated Approval of Amendments No. 1 and No. 2 Thereto

December 14, 1999.

I. Introduction

On September 20, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending the Exchange's audit committee requirements.

The **Federal Register** published the proposed rule change for comment on October 13, 1999.[3] In response, the Commission received 25 comment letters.[4] On October 15, 1999 and December 8, 1999, the Exchange submitted Amendments No. 1[5] and No. 2,[6] respectively, to the proposed rule change. This order approves the proposed rule change and grants accelerated approval to Amendments No. 1 and No. 2. The Commission is also soliciting comment on Amendments No. 1. and No. 2 to the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

In February 1999, the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (''Blue Ribbon Committee'') issued a report containing recommendations aimed at strengthening the independence of the audit committee, making the audit committee more effective, and addressing mechanisms for accountability among the audit committee, the outside auditors, and management.[7]

The Exchange distributed to its listed companies the Exchange staff's suggestions for rule changes in response to the Blue Ribbon Committee's report. The comments from the Exchange's listed companies were generally supportive of the suggestions put forth by the Exchange, with some commenters expressing concerns about ''financial literacy'' requirement.

In response to the Blue Ribbon Committee's recommendations, the Exchange proposes to revise its listing standards regarding audit committees. The proposed rule change specifies four requirements for a qualified audit committee and defines the terms ''Immediate Family'' and ''Affiliate'' for purposes of the proposed audit committee requirements.

The text of the proposed rule change, as amended by Amendments No. 1 and No. 2, is as follows. Language deleted by Amendments No. 1 and No. 2 is in brackets. Language added by Amendments No. 1 and No. 2 is in italics.

NYSE Listed Company Manual

* * * * *

Section 3

Corporate Responsibility

303.00 Corporate Governance Standards

In addition to the numerical listing standards, the Exchange has adopted certain corporate governance listing standards. These standards apply to all companies listing common stock on the Exchange. However, the Exchange does not apply a particular standard to a non-U.S. company if the company provides the Exchange with a written certification from independent counsel of the company's country of domicile stating that the company's corporate governance practices comply with home country law and the rules of the principal securities market for the company's stock outside the United States.

303.01 Audit Committee

(A) Audit Committee Policy. Each company must have a qualified audit committee.

(B) Requirements for a Qualified Audit Committee.

(1) Formal Charter. [Each audit committee must adopt a formal written charter that is approved by the Board of Directors.] *The Board of Directors must adopt and approve a formal written charter for the audit committee.* The audit committee must review and reassess the adequacy of the audit committee charter on an annual basis. The charter must specify the following:

(a) The scope of the audit committee's responsibilities and how it carries out those responsibilities, including structure, processes and membership requirements;

(b) That the outside auditor for the company is ultimately accountable to the Board of Directors and audit committee of the company, that the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41980 (Oct. 6, 1999), 64 FR 55514 (Oct. 13, 1999). The Nasdaq Stock Market, Inc. and The American Stock Exchange LLC have proposed rule changes relating to audit committees. *See* Securities Exchange Act Release No. 41982 (Oct. 6, 1999), 64 FR 55510 (Oct. 13, 1999) (''Nasdaq Proposal''), and Securities Exchange Act Release No. 41981 (Oct. 6, 1999), 64 FR 55505 (Oct. 13, 1999) (''Amex Proposal'').

[4] The comment letters are discussed in Section III of this order.

[5] Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation (''Division''), Commission, dated October 14, 1999 (''Amendment No. 1''). The Exchange submitted Amendment No. 1 to require issuers to adopt a formal written audit committee charter within six months of the effective date of the proposed rule change. As originally filed, the proposed rule change required issuers to adopt the charter within eighteen months of the effective date of the proposed rule change. Amendment No. 1 also extends the definition of ''officer'' in Rule 16a–1(f) under the Act to Paragraph 303 of the Exchange's *Listed Company Manual.* Previously, the Exchange permitted each company's by-laws and charter to define this term.

[6] Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division, Commission, dated December 6, 1999 (''Amendment No. 2''). Amendment No. 2 revises proposed rule 303.01(B)(1) to require the board to adopt the audit committee charter. Under the original proposal, the audit committee adopted the charter, subject to board approval. Amendment No. 2 also revises proposed Rule 303.01(B)(1)(c) to replace the provision that required the board to take appropriate steps to ensure the independence of the outside auditors. The revised provision requires the board ''to take appropriate action in response to the outside auditors report to satisfy itself of the outside auditor's independence.'' Finally, Amendment No. 2 revises proposed Rule 303.02 to require companies listing on the Exchange in conjunction with an initial public offering to have two qualified audit committee members in place within three months of listing, and a third qualified member within twelve months of listing.

[7] *Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (1999).* A copy of this Report can be found on-line at www.nasdaqnews.com.

audit committee and Board of Directors have the ultimate authority and responsibility to select, evaluate and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement); and

(c) That the audit committee is responsible for ensuring that the outside auditor submits on a periodic basis to the audit committee a formal written statement delineating all relationships between the auditor and the company and that the audit committee is responsible for actively engaging in a dialogue with the outside auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the outside auditor and for recommending that the Board of Directors take appropriate action [to ensure the independence of the outside auditor] *in response to the outside auditors' report to satisfy itself of the outside auditors' independence.*

(2) Composition/Expertise Requirement of Audit Committee Members.

(a) Each audit committee shall consist of at least three directors, all of whom have no relationship to the company that may interfere with the exercise of their independence from management and the company (''Independent'');

(b) Each member of the audit committee shall be financially literate, as such qualification is interpreted by the company's Board of Directors in its business judgment, or must become financially literate within a reasonable period of time after his or her appointment to the audit committee; and

(c) At least one member of the audit committee must have accounting or related financial management expertise, as the Board of Directors interprets such qualification in its business judgment.

(3) Independence Requirement of Audit Committee Members. In addition to the definition of Independent provided above in (2)(a), the following restrictions shall apply to every audit committee member.

(a) Employees. A director who is an employee (including non-employee executive officers) of the company or any of its affiliates may not serve on the audit committee until three years following the termination of his or her employment. In the event the employment relationship is with a former parent or predecessor of the company, the director could serve on the audit committee after three years following the termination of the relationship between the company and the former parent or predecessor.

(b) Business Relationship. A director (i) Who is a partner, controlling shareholder, or executive officer of an organization that has a business relationship with the company, or (ii) Who has a direct business relationship with the company (*e.g.*, a consultant) may serve on the audit committee only if the company's Board of Directors determines in its business judgment that the relationship does not interfere with the director's exercise of independent judgment. In making a determination regarding the independence of a director pursuant to this paragraph, the Board of Directors should consider, among other things, the materiality of the relationship to the company, to the director, and, if applicable, to the organization with which the director is affiliated.

''Business relationships'' can include commercial, industrial, banking, consulting, legal, accounting and other relationships. A director can have this relationship directly with the company, or the director can be a partner, officer or employee of an organization that has such a relationship. The director may serve on the audit committee without the above-referenced Board of Directors' determination after three years following the termination of, as applicable, either (1) The relationship between the organization with which the director is affiliated and the company, (2) The relationship between the director and his or her partnership status, shareholder interest or executive officer position, or (3) The direct business relationship between the director and the company.

(c) Cross Compensation Committee Link. A director who is employed as an executive of another corporation where any of the company's executives serves on that corporation's compensation committee may not serve on the audit committee.

(d) Immediate Family. A director who is an Immediate Family member of an individual who is an executive officer of the company or any of its affiliates cannot serve on the audit committee until three years following the termination of such employment relationship. See para. 303.02 for definition of ''Immediate Family.''

303.02 Application Standards

(A) ''Immediate Family'' includes a person's spouse, parents, children, siblings, mothers-in-law and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than employees) who shares such person's home.

(B) ''Affiliate'' includes a subsidiary, sibling company, predecessor, parent company, or former parent company.

(C) Written Affirmation. As part of the initial listing process, and with respect to any subsequent changes to the composition of the audit committee, and otherwise approximately once each year, each company should provide the Exchange written confirmation regarding:

(1) Any determination that the company's Board of Directors has made regarding the independence of directors pursuant to any of the subparagraphs above;

(2) The financial literacy of the audit committee members;

(3) The determination that at least one of the audit committee members has accounting or related financial management expertise; and

(4) The annual review and reassessment of the adequacy of the audit committee charter.

(D) Independence Requirement of Audit Committee Members. Notwithstanding the requirements of subparagraphs (3)(1) and (3)(d) of para. 303.01, one director who is no longer an employee or who is an Immediate Family member of a former executive officer of the company or its affiliates, but is not considered independent pursuant to these provisions due to the three-year restriction period, may be appointed, under exceptional and limited circumstances, to the audit committee if the company's board of directors determines in its business judgment that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, and the company discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination.

(E) ''Officer'' shall have the meaning specified in Rule 16a–1(f) under the Securities Exchange Act of 1934, or any successor rule.

(F) Initial Public Offering. Companies listing in conjunction with their initial public offering (including spin-offs and carve outs) will be required to have two qualified audit committee members in place within three months of listing and a third qualified member in place within twelve months of listing.

B. Charter

The Exchange proposes to require audit committees to adopt a formal written charter that is approved by the company's board and to review and reassess annually the adequacy of the charter. The charter must specify: (i)

The scope of the audit committee's responsibilities and how they are being carried out; (ii) the ultimate accountability of the outside auditor to the board and audit committee; (iii) the responsibility of the audit committee and board for selection, evaluation and replacement of the outside auditor; and (iv) The responsibility of the audit committee for ensuring the independence of the outside auditor by reviewing, and discussing with the board if necessary, any relationships between the auditor and the company or any other relationships that may adversely affect the independence of the auditor.

C. Structure and Membership of the Audit Committee

The Exchange also proposes to change the structure and membership qualifications of the audit committee. Under the proposed rule change, each audit committee must have at least three independent directors, subject to a board override for one director. The board may override the three-year bar for one audit committee member after finding that an override is required in the best interests of the company and its shareholders. If it exercises the override, the company must disclose in its next annual proxy statement the nature of the relationship and the reasons for that determination. Potential candidates that are not considered independent because of a business relationship with the company or a cross compensation committee link may not be the subject of a board override.

As a result of the audit committee's responsibility for a company's accounting and financial reporting, the Exchange believes that audit committee members should have a basic understanding of financial statements. Therefore, the proposed rule change requires each audit committee member to be financially literate, or to become financially literate within a reasonable period of time after his or her appointment to the audit committee, as such qualification is interpreted by the company's board in its business judgment. Furthermore, in order to further enhance the effectiveness of the audit committee, the proposal requires at least one member of each audit committee to have accounting or related financial management expertise, as the company's board interprets such qualification in its business judgment.

D. Independence

The proposed rule change places four restrictions on audit committee members for purposes of determining each member's independence. First, Employees (including non-employee executive officers) of the company or its affiliates may not serve on the audit committee until three years following the termination of employment. However, if the relationship is with a former parent or predecessor of the company (see definition of ''Affiliate'' described in Subsection F below), the three-year bar applies to the time period following the severance of the relationship between the company and the former parent or predecessor.

Second, a director: (i) who is a partner, controlling shareholder, or executive officer of an organization that has a business relationship with the company, or (ii) who has a direct business relationship with the company (*e.g.,* a consultant), may serve on the audit committee only if the company's board determines in its business judgment that the relationship does not interfere with the director's exercise of independent judgment. Business relationships can include commercial, industrial, banking, consulting, legal, accounting and other relationships. A director can have this relationship directly with the company, or the director can be a partner, officer or employee of an organization that has the business relationship.

Third, a director who is employed as an executive of another corporation where any of the company's executives serves on that corporation's compensation committee may not serve on the audit committee.

Fourth, a director who is ''Immediate Family'' (as that term is defined by proposed Exchange Rule 303.01(B)(3)(d)) of an individual who is an executive officer of the company or any of its affiliates cannot serve on the audit committee until three years following the termination of such employment relationship.

E. Written Affirmation

To monitor compliance with the proposed rule change, the Exchange proposes to incorporate an ongoing written affirmation requirement. In this regard, as part of the initial listing process, and with respect to any subsequent changes to the composition of the audit committee, and otherwise approximately once each year, each company must provide the Exchange written confirmation regarding:

(i) Any determination that the company's board has made regarding the independence of directors;

(ii) The financial literacy of the audit committee members;

(iii) The determination that at least one of the audit committee members has accounting or related financial management expertise; and

(iv) The annual review and reassessment of the adequacy of the audit committee charter.

F. Definitions

The Exchange proposes to codify two long-standing interpretations under the current audit committee requirements as follows:

(i) ''Immediate Family'' includes a person's spouse, parents, children, siblings, mother-in-law and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than employees) who shares such person's home; and

(ii) ''Affiliate'' includes a subsidiary, sibling company, predecessor, parent company, or former parent company.

G. Implementation

The Exchange proposes to implement a transition period to provide its issuers with sufficient time to comply with the proposed rule change. Specifically, the Exchange proposes to: (i) ''grandfather'' all public company audit committee members qualified under current NYSE rules until they are re-elected or replaced; and (ii) give companies that have less than three members on their audit committees eighteen months from the date of Commission approval of this rule filing to recruit the requisite members. Issuers listed on the Exchange as of the effective date of the proposed rule change will have six months to adopt a formal written audit committee charter.[8]

III. Comments

As of December 9, 1999, the Commission received 25 comment letters on the proposed rule change.[9] In

[8] *See* Amendment No. 1, *supra* n. 5.

[9] *See* letters from: Ernst & Young LLP (''E&Y'') dated November 1, 1999; Deloitte & Touche LLP (''Deloitte'') dated November 3, 1999; Council of Institutional Investors (''CII'') dated November 8, 1999; Brian T. Borders (on behalf of the National Venture Capital Association (''NVCA'')) dated November 12, 1999; Investment Company Institute (''ICI'') dated November 3, 1999; PriceWaterhouseCoopers LLP (''PWC') dated November 1, 1999; Gary P. Kreider (''Kreider'') dated November 5, 1999; Emerson Electric Co. (''Emerson'') dated November 1, 1999; Exxon Corporation (''Exxon'') dated November 3, 1999; McDonald's Corporation (McDonald's) dated November 1, 1999; Connectiv (''Connectiv'') dated November 2, 1999; Texas Instruments (''TI'') dated November 2, 1999; Dime Bancorp, Inc. (''Dime'') dated November 3, 1999; Airlease Management Services, Inc. (''Airlease'') dated November 3, 1999; The Dun & Bradstreet Corporation (''D&B'') dated November 3, 1999; EMC Corporation (''EMC'') dated November 1, 1999; Dorsey & Whitney LLP (''Dorsey'') (on behalf of nine closed-end investment management companies whose stock is listed on the Exchange) dated October 28, 1999; Massachusetts

Continued

general, most commenters favored the proposed rule change but recommended certain modifications. Three commenters opposed the proposed rule change.[10]

In particular, the CII supports the new requirements, but stated that the proposed board override provision, which allows a company's board to include a non-independent director on an audit committee, is not appropriate because companies should not have a problem finding financially literate, truly independent directors.[11] In addition, the AFL–CIO stated that the restriction period for former employees, or relatives of former employees, should be three years instead of five years.[12] MFSC stated that audit committees should not be required to describe in their charters how they carry out their responsibilities.[13]

Many of the commenters pointed to differences between the proposed rule change, on the one hand, and the Amex Proposal and Nasdaq Proposal, on the other. Specifically, several commenters stated that the Exchange should adopt the Amex's and Nasdaq's definitions of financial literacy and expertise.[14] These commenters noted that allowing individual companies to define these terms will lead to inconsistencies. In addition, several commenters stated that the proposed rule change will discourage qualified candidates from serving on audit committees.[15] Moreover, one commenter stated that the restriction that prohibits an individual who is an immediate family member of an executive officer of the company or any of its affiliates from serving on the audit committee should not be limited to executive officers.[16] Finally, three commenters stated that the Exchange should adopt a bright line test for identifying when a director has a significant business relationship with the company, as in the Amex Proposal and Nasdaq Proposal.[17] On the other hand, another commenter opposed a bright line test and stated that the Exchange should not revise its current test to determine if a significant business relationship exists.[18]

In addition, one commenter stated that past non-executive employment should be treated as a significant business relationship.[19] This commenter also stated that consultants who receive from the company more than a *de minimis* amount of compensation should be treated as employees, while consultants who do not should be treated as having a business relationship with the company.[20] According to the commenter, the company's board should be permitted to determine that the compensation does not impair the director's objectivity.[21] Moreover, the commenter objected to the financial expertise requirement and stated that no director will want to be designated the financial expert because of the added exposure to liability.[22]

APTC stated that the proposed rule change will be counter productive to the goal of better audit committees.[23] In addition, APTC stated that the proposed rule change will disadvantage smaller companies more than larger companies, but concluded that it is appropriate to apply the proposed rule change to all companies, regardless of size.[24] Moreover, APTC is opposed to the proposal's financial literacy requirement.[25] APTC believes that the financial literacy requirement may deprive audit committees of the service of individuals with ''exceptional character and/or operational experience.''[26] The commenter suggested that the Exchange replace this requirement with a requirement that the committee as a whole posses a certain level of financial acumen.[27]

TI stated that to reduce unrealistic expectations, the proposed rule change should require or permit a disclaimer in the audit committee charter stating that the committee does not provide any special assurances with regard to the company's financial statements, nor does the audit committee give a professional evaluation of the quality of the audits performed by the independent public accountants.[28] Exxon and NYSBA stated that the company's board, not the audit committee, should be required to adopt the audit committee charter because audit committees are created by the board in its discretion and under authority granted by state law.[29]

Exxon also stated that proposed Rule 303.01(B)(2)(a), which requires audit committees to have at least three directors, all of whom must be independent, should provide a business judgment standard for independence, as subparts (b) and (c) of this Rule do with respect to financial literary and expertise.[30] Exxon also stated that proposed Rule 303.01(B)(1) should not give both the board and the audit committee ultimate responsibility to select, evaluate, and replace the outside auditor.[31] Exxon stated that only one body can have ultimate authority.[32] McDonald's stated that a yearly written confirmation regarding financial literacy, financial expertise, independence of directors, and adequacy of the audit committee's charter is unnecessary.[33]

Deloitte and PWC each stated that requiring a company's board or audit committee to ''ensure'' the

Financial Services Company (''MFSC'') (on behalf of six closed-end funds advised by MFSC) dated November 22, 1999; Meritor Automotive, Inc. (''Meritor'') dated November 24, 1999; American Federation of Labor and Congress of Industrial Organizations (''AFL–CIO'') dated November 29, 1999; Mayer, Brown & Platt on behalf of Morgan Stanley Dean Witter (''MSDW'') dated November 29, 1999; Arthur Andersen LLP (''Arthur Andersen'') dated December 3, 1999; Association of Publicly Traded Companies (''APTC'') dated December 6, 1999; Robert A. Profusek (''Profusek'') dated December 3, 1999; Stanley Keller and Richard Rowe (''Keller and Rowe'') dated December 7, 1999; and The Committee on Securities Regulation of the Business Law Section of the New York State Bar Association (''NYSBA'') dated December 1, 1999.

[10] *See* Kreider Letter at 2; EMC Letter at 2; APTC Letter at 2. Kreider stated his belief that the proposed rule change circumvents state corporate law. EMC stated that the proposed rule change substitutes over-generalized restrictions for the more flexible, traditional standards of good faith, candor, care and loyalty that underlie the business judgment rule under state law. EMC also stated that the independence standards may deprive audit committees of valuable financially-expert directors.

[11] CII Letter at 2; *see also* AFL–CIO Letter at 2.

[12] AFL–CIO Letter at 2.

[13] MFSC Letter at 1.

[14] Dorsey Letter at 7, 9; E&Y Letter at 3; Connectiv Letter at 2; D&B Letter at 2; Emerson Letter at 2; NYSBA Letter at 5. In addition, two commenters stated that the terms financial literacy and expertise are too subjective and should be further defined, but did not state the Amex/Nasdaq versions should be adopted. *See* McDonald's Letter at 1; MFSC Letter at 2. MFSC Letter at 2. MFSC also stated that it is not reasonable to expect a company's board to request agreement from a potential audit committee candidate that he will become financially literate because there are no accreditation criteria or specific timeframes for completing this undertaking. MFSC Letter at 2.

[15] Dime Letter at 2; NVCA Letter at 2; D&B Letter at 2; MFSC at 2.

[16] Keller and Rowe Letter at 2.

[17] E&Y Letter at 2; Emerson at 2; Arthur Andersen Letter at 1. In addition, the AFL–CIO stated that the NYSE should adopt a bright line test, but does not think the $60,000 threshold adopted by the Amex and Nasdaq is stringent enough. AFL–CIO Letter at 3.

[18] Profusek Letter at 2.

[19] Keller and Rowe Letter at 2.

[20] *Id* at 3.

[21] *Id.*

[22] *Id.; see also* NYSBA Letter at 6.

[23] APTC Letter at 2.

[24] *Id.* at 3.

[25] *Id.* at 4–5.

[26] *Id.*

[27] *Id.* at 5.

[28] TI Letter at 1.

[29] Exxon Letter at 1; NYSBA Letter at 2.

[30] Exxon Letter at 2. The Commission notes that proposed Rule 303.01(B)(2)(b) and (c) require each company's board to interpret the terms ''financial literary'' and ''financial expertise.'' The business judgment standard therefore applies to the board's interpretation of these terms. Subpart (a) of the rule does not require the board to interpret the term ''independence'' and, thus, there is no need for a business judgment standard.

[31] Exxon Letter at 1.

[32] *Id.*

[33] McDonald's Letter at 2.

independence of the outside auditor goes beyond what can reasonably be expected of the board and the audit committee in their oversight role.[34] Deloitte suggested that the Exchange replace the word ''ensure'' with ''monitor'' or ''actively oversee.'' [35] E&Y supports the proposed rule change overall, but stated that Small Business Filers should not be exempt from the financial literacy and expertise requirements and that the Exchange should expand its definition of immediate family member to include sons-in-law and daughters-in-law.[36] Airlease stated that smaller companies should not be required to have three independent auditors on their audit committees.[37]

In addition, the NVCA stated that the proposed rule change should exclude venture capital investors from the independence qualifications.[38] The NVCA also stated that the proposed rule change should give companies that have just completed an initial public offering (''IPO'') eighteen months to comply with the new requirements.[39]

Three commenters stated that the proposed rule change should not apply to closed-end investment companies.[40] ICI and MSDW noted that closed-end investment companies are adequately regulated under the 1940 Act.[41] These two commenters also stated that the potential abuses that the proposed rule change is designed to address do not exist with respect to closed-end investment funds because the assets of closed-end funds, consist exclusively of investment securities and thus there is no opportunity to ''manage'' earnings or results through the selective application of accounting policies.[42]

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[43] and, in particular, the requirements of section 6(b)(5) of the Act.[44] The Commission believes that the proposed rule change will protect investors by improving the effectiveness of audit committees of companies listed on the Exchange. The Commission also believes that the new requirements will enhance the reliability and credibility of financial statement of companies listed on the Exchange by making it more difficult for companies to inappropriately distort their true financial performance.

Specifically, the Commission believes that the proposed definition of independence will promote the quality and reliability of a company's financial statements. The Commission believes that directors without financial, familial, or other material personal ties to management will be more likely to objectively evaluate the propriety of management's accounting, internal control, and financial reporting practices. The Commission also believes that the proposal's prohibition against employees serving on the audit committee is appropriate and that the Exchange should not be required to distinguish between executive and non-executive employees.[45] In addition, the Commission considers that the proposed provision permitting a company to appoint one non-independent director to its audit committee, if the board determines that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, adequately balances the need for objective, independent directors with the company's need for flexibility in exceptional and unusual circumstances. The Commission believes that the proposal's requirement that the company disclose in its next annual proxy statement the nature of the relationship and the board's reasons for determining that the appointment was in the best interests of the corporation will adequately guard against abuse of the proposed exception to the independence requirement.[46]

The Commission does not believe that venture capital investors should be excluded from the Exchange's definition of independence. The Commission does not view the proposed rule change as posing an undue hardship on venture capital firms or companies listed on the NYSE. The Commission notes that the proposed rule change will only prohibit venture capital investors from sitting on a company's audit committee if the investor does not fall within the Exchange's definition of independence. The proposed rule change will not prohibit previously eligible investors from serving on the company's board.

In addition, the Commission believes that requiring boards of directors of listed companies to adopt formal written charters specifying the audit committee's responsibilities, and how it carries out those responsibilities, will help the audit committee, management, investors, and the company's auditors recognize, and understand the function of the audit committee and the relationship among the parties. Moreover, the Commission believes that the proposal's requirement that companies provide yearly written confirmation regarding the independence, financial literacy, and financial expertise of directors, as well as the adequacy of the audit committee charter, will help the Exchange to ensure that listed companies are complying with the proposed rule change.

The Commission believes that the proposed rule change's requirement that each issuer have an audit committee composed of three independent directors who are able to read and understand fundamental financial statements will enhance the effectiveness of the audit committee and help to ensure that audit committee members are able to adequately fulfill their responsibilities. The Commission believes that requiring each audit committee member to satisfy this standard will help to ensure that the committee as a whole is financially literate.[47] Moreover, the Commission believes that requiring one member of the audit committee to have past employment experience in financial or accounting, requisite professional certification in accounting, or any other comparable experience or background that indicates the individual's financial sophistication, will further enhance the effectiveness of the audit committee in carrying out its financial oversight responsibilities. The Commission does

[34] Deloitte Letter at 1; PWC Letter at 1; Meritor Letter at 2.

[35] *Id.* at 2.

[36] E&Y Letter at 4. In addition, the NVCA stated that the exemption for Small Business Filers should be expanded to apply to companies with less than $50 million in revenue. NVCA Letter at 4. The Commission notes, unlike the Nasdaq Proposal and the Amex Proposal, there is no exemption for Small Business Filers under the NYSE's proposed rule change.

[37] Airlease Letter at 1.

[38] NVCA Letter at 5.

[39] *Id* at 4.

[40] ICI Letter at 2; MSDW Letter at 1; Keller and Rowe Letter at 3. In addition, Keller and Rowe stated that the proposed rule change should exempt all investment companies because their audit committee members are already required not to be ''interested persons'' as that term is defined in Section 2(a)(9) of the Investment Company Act of 1940 (''1940 Act''). Keller and Rowe Letter at 5. Moreover, Dorsey supported the application of the proposed rule change to investment companies. Dorsey Letter at 3.

[41] ICI Letter at 3–4; MSDW Letter at 2.

[42] ICI Letter at 3; MSDW Letter at 1. ICI and MSDW also noted that the independent accountants of investment funds are selected by the independent directors of the fund.

[43] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[44] 15 U.S.C. 78f(b)(5).

[45] *See* Keller and Rowe Letter at 2.

[46] The Commission does not believe that the Exchange should require its listed companies to adopt a separate provision on consultants. *See* Keller and Rowe Letter at 3.

[47] *See* APTC Letter at 5.

not believe that these requirements will discourage qualified candidates from serving on audit committees. Rather, the Commission believes that these requirements will better enable companies to identify and select qualified directors. In addition, the Commission does not believe that companies will experience undue difficulty recruiting an audit committee member that satisfies the financial expertise requirements.

Moreover, the Commission considers the Exchange's decision to exempt Small Business Filers as appropriate.[48] The Commission notes that relatively few companies that qualify for listing on the Exchange would also qualify as Small Business Filers under SEC Regulation S–B.[49]

Furthermore, the Commission does not believe that the Exchange should be required to adopt the Amex and Nasdaq proposed definitions of financial literacy and expertise or the test to determine when a potential director has a significant business relationship with the company. The Commission notes that the proposed rule change is not inconsistent with the Act.

Moreover, the Commission has concluded that the Exchange's decision to include investment companies in the proposed rule change is warranted. While the Commission recognizes that the opportunity for some types of financial reporting abuses may be limited by the nature of fund assets,[50] it believes that audit committees do play an important role in overseeing the financial reporting process for investment companies.

Finally, the Commission does not view the proposed rule change as circumventing state law.[51] The Commission notes that the Exchange is amending its own listing standards, which is a function within the Exchange's discretion, as long as those changes are consistent with the Act.

The Commission finds good cause for approving Amendments No. 1 and No. 2 to the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that Amendment No. 1 revises the implementation time periods for the proposed rule change solely to provide greater clarity to issuers and to investors. The Commission believes that Amendment No. 1 will enable issuers to determine when they must comply with the new requirements and will enable investors to determine when to reply on the protections afforded by the proposed rule change. The Commission notes that Amendment No. 2 simply codifies the Exchange's existing policy on the timing of audit committee requirements for IPO's; clarifies that the company's board must take appropriate action to satisfy itself of the outside auditor's independence, and is not intended to provide an absolute guarantee of independence; and requires the board to adopt the audit committee charter, rather than approving the charter adopted by the audit committee. The Commission believes that accelerated approval will allow the Exchange to simultaneously make all relevant modifications to its *Listed Company Manual* and will avoid potential confusion. Accordingly, the Commission finds good cause to accelerate approval of Amendments No. 1 and No. 2 to the proposed rule change, consistent with the Sections 6(b)(5)[52] and 19(b)[53] of the Act.

V. 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, NW, Washington, DC 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 witheld 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 will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–NYSE–99–39 and should be submitted by January 11, 2000.

VI. Conclusion

For the foregoing reasons, the Commission finds that the Exchange's proposal to amend its audit committee requirements is consistent with the requirements of the Act and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[54] that the amended proposed rule change (SR–NYSE–99–39) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[55]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33052 Filed 12–20–99; 8:45 am]

BILLING CODE 8010–01–M

[48] *See* NVCA and Airlease Letters.

[49] Small Business Filer is defined by Regulation S–B as an issuer that: (i) has revenue of less than $25,000,000; (ii) is a U.S. or Canadian issuer; and (iii) if a majority owned subsidiary, the parent corporation is a small business issuer. 17 CFR 228.10(a)(1).

[50] *See* Keller and Rowe Letter at 5; ICI Letter at 3; MSDW Letter at 1.

[51] Kreider Letter at 2.

[52] 15 U.S.C. 78f(b)(5).

[53] 15 U.S.C. 78s(b).

[54] 15 U.S.C. 78s(b)(2).

[55] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3180]

Culturally Significant Objects Imported for Exhibition Determinations: ''Walker Evans''

DEPARTMENT: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Walker Evans,'' imported from abroad for temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lender. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about January 31, 2000, to on or about May 14, 2000; the San Francisco Museum of Modern Art, San Francisco, California, from on or about June 2, 2000, to on or about September 12, 2000, and at the Museum of Fine Arts, Houston, Texas, from on or about December 17, 2000, to on or about March 11, 2001, is in the national interest.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Lorie J. Nierenberg, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6084). The address is U.S. Department of State, SA–

44; 301–4th Street, SW, Room 700, Washington, DC 20547–0001.

Dated: December 15, 1999.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 99–33060 Filed 12–20–99; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3182]

Bureau of Educational and Cultural Affairs NIS Secondary School Partnership Program

NOTICE: Request for proposals.

SUMMARY: The Office of Citizen Exchanges, Youth Programs Division, in the Bureau of Educational and Cultural Affairs of the United States Department of State announces an open competition for the NIS Secondary School Partnership Program. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to either enhance or expand existing partnerships or develop new school partnership programs with Armenia, Azerbaijan, Belarus, Georgia, Moldova, Russia, or Ukraine. All proposals must have a thematic focus and feature on-going joint project activity between the schools, a student exchange component, and an educator (teacher/administrator) exchange component. The maximum grant award will be $125,000 for single-country applications and $200,000 for multiple country applications.

Program Information

The Secondary School Partnership Program is funded under the Freedom Support Act to assist young people in building an open society and developing democratic processes and institutions in the New Independent States (NIS). This program provides grants to link schools in the seven countries noted above with schools in the United States.

The U.S. recipient of the grant is responsible for recruiting, selecting, and organizing a U.S. network of a minimum of two secondary schools; strengthening an existing working relationship with an organization or agency of government in the NIS responsible for a network of at least two schools there; and linking the two networks in one-to-one school partnerships through a thematic project and substantive exchange activities.

Overview

The short-term goal of the school partnership program is to provide partial funding for linkages between U.S. and NIS schools featuring collaborative substantive projects and reciprocal student and educator exchanges with strong academic content. The long-term goals are to: (1) develop lasting, sustainable institutional ties between U.S. and NIS schools and communities; (2) support democracy in the NIS; (3) advance mutual understanding between the youth and teachers of the U.S. and the NIS; and (4) promote partnerships developed through governmental, educational, and not-for-profit sector cooperation that serve the needs and interests of the schools.

The program has several defining features to help the participating schools develop their partnership:

—Each partnership has a project theme and the students and teachers in the two schools work on a joint project throughout the school year related to this theme;

—The two schools develop a relationship over the course of an academic year, through the planning process and the work on their joint project, which is highlighted by exchanges from three weeks to ten months in duration. Exchanges take place while the host school is in session.

—The student and teacher exchanges must be reciprocal.

—The program includes educators (teachers and/or administrators) in order to involve them in all aspects of the partnership and to provide them access to resources for curriculum development and educational training.

—During the exchange, participants attend class, are involved in school-based activities, work on their joint project, perform community service, visit educational and cultural sites, and reside with host families.

An applicant may, but is not required to, propose one of several optional features in its proposal. Please see these three optional features described later in this solicitation.

Dates

Grants may begin on or about July 15, 2000, and cover the 2000–2001 academic year. The exact starting date of the grant will be dependent on availability of funds.

Guidelines

A competitive proposal will present a project that builds upon previous contacts and interaction between the proposed schools to help ensure a solid foundation for the partnership. Partnerships should have an existence beyond the scope of this initiative; that is, there should be an inherent reason for the linkage apart from the availability of grant funds. Organizers and school networks in the U.S. and NIS should collaborate in planning and preparation. Applicants must have an NIS organizational partner that has its base of operation in the partner country and not in another country. Proposals should support a working relationship that will produce something tangible and lasting in addressing the interests of both sides, beyond the confines of the funded project, such as the development of educational materials. The proposal should specify measurable goals and objectives of the program.

In general, the Bureau seeks school partnerships that target under-served countries or regions. For programs with Russia and Ukraine, priority will be given to partnerships with schools located outside of the Moscow, St. Petersburg, and Kiev regions. Bureau funding may not be used to supplant existing private sector funding. Competitive proposals must demonstrate a solid and comprehensive follow-on plan to continue after the grant has expired.

Proposals must clearly describe and define substantive thematically-based projects for each school partnership that are the focus of the exchange for both students and educators and on-going joint project activity between the two schools. Specific activities, products, curriculum materials, and pre-planning are areas that can be addressed.

For example, what will the participants be doing and how is it relevant to the thematic focus of the program? Applicants should present a program that succeeds in linking the greater school community. All participating schools must be identified. Proposals should describe the selected theme, its importance to the schools and communities, the specific academic activities, and the expected outcome or product of the project. Possible themes include but are not limited to the following: democracy education, volunteerism or community service, conflict resolution, business management, health education, environmental issues, youth leadership training, computer technology, multicultural education, and agriculture.

Proposals must clearly present independent educator programs for teachers/administrators. These programs could include curriculum development seminars, shadowing of host peers in the classroom, university-level courses, or other substantive activities, with an emphasis on such themes as parent-teacher cooperation, model schools,

teacher training, and collaboration with local businesses. A program that relies on the educator to act as just an escort will not be competitive.

Optional Features

An applicant may choose to present its proposed program in accordance to the guidelines above or may choose to implement one of the following features. Clearly indicate if you are including one of these features and, if so, which one, on your application cover sheet. All guidelines outlined in this solicitation still apply unless noted below.

Feature One: Educators travel separately. In lieu of having students and educators travel to their partner school together, the applicant may arrange for an escort to accompany the student group while up to two educators travel to the partner school at another time. This arrangement would apply to both U.S. to NIS travel and NIS to U.S. travel. Travel during the school year is preferred, but educators' travel may take place during the summer if a significant component of their exchange contributes to the development of the partnership between the schools. This design will allow for sustained personal contact throughout the school year and will allow educators to focus on their own professional development during their exchange.

Feature Two: Grant period spans two school years. In lieu of having one reciprocal exchange during the 2000–2001 academic year, the applicant may arrange for each school to send and receive two smaller delegations, once in 2000–2001 and again in 2001–2002 for a total of four exchange trips. The grant period would start on or about July 15, 2000, and end on or about July 15, 2002. This design allows for longer, sustained interaction between the schools. Grant requests, however, may not exceed the limits noted in this solicitation.

Feature Three: Only one school partnership is formed. In lieu of a network of schools in the U.S. and in the NIS, an applicant that is a secondary school or school district may propose to link only one school in the U.S. with one school in the NIS. The NIS organizational coordinator may be an individual at the partner school as long as he or she can fulfill the responsibilities outlined in this solicitation. The grant request that accompanies applications with this feature may not exceed $50,000.

Applicants that choose one of these features should provide a brief explanation of why they have chosen to do so and how they believe it will enhance their program.

Responsibilities

The U.S. organization receiving the grant will (1) design the overall plan that integrates the joint project activity and the exchange components of the partnership; (2) ensure quality control for all program elements; (3) keep The Bureau informed of its progress; (4) manage all travel arrangements, logistics, passports, visas, etc.; (5) provide competent and informed escorts for student groups; and (6) disburse and account for grant funds. Recipients of a grant are responsible for ensuring the selection of exchange participants who are most suited for the program and for providing them with a meaningful pre-departure orientation. Selection of individual participants from the U.S. and the NIS in the exchange components of the program must be open, competitive, and merit-based; the proposal should describe the mechanisms used for participant selection. All participants from the U.S. and the NIS should represent the full diversity of their communities (racial, ethnic, economic status, religious, etc.) to give greater understanding to the culture and society as a whole.

Preference will be given to proposals that include schools that have not received funding under the NIS Secondary School Initiative for a total of three years.

Significant cost-sharing is mandatory in all proposals, and those that show more generous and creative cost-sharing will be more favorably viewed. Proposals that contain non-Bureau funded items such as additional students and/or educators on the exchange, U.S. participants paying for some of their own costs, computer software purchases, cultural excursions, capital city civics programs, and other significant items will be more competitive proposals than those that do not. However, NIS participants may not be charged to participate in the program, aside from paying for home country costs (such as transportation to the point of departure), the costs of hosting the U.S. students and educators, and miscellaneous expenses such as pocket money.

Please be sure to refer to the Project Objectives, Goals, and Implementation (POGI) section of the Solicitation Package for greater detail regarding the design of the component parts as well as other program information. Also consult the Proposal Submission Instructions (PSI) for information on budget presentation and required forms.

Budget Guidelines

Applicants must submit a comprehensive budget for the entire project. For single-country applications, awards may not exceed $125,000 or the country allocation noted below, whichever is less. Awards for one school partnership (optional feature three) may not exceed $50,000. The maximum award for multiple country applications is $200,000. The Bureau has set country allocations for this competition and all proposals must adhere to these maximum amounts per country. Only partnerships between secondary schools in the United States and these countries are eligible for this competition.

Country allocations (subject to change): Armenia $97,000; Azerbaijan $97,000; Belarus $97,000; Georgia $97,000; Moldova $68,000; Russia $500,000; Ukraine $330,000.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. All program costs should clearly indicate whether they cover U.S. or NIS participants. Be sure to note the statement on cost-sharing in the Guidelines section. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number

All correspondence with the Bureau concerning this RFP should reference the above title and number ECA/PE/C–00–26.

FOR FURTHER INFORMATION, CONTACT: The Youth Programs Division, Office of Citizen Exchanges, ECA/PE/C/PY, Room 568, U.S. Department of State, 301 4th Street, S.W., Washington, D.C. 20547, telephone (202) 619-6299; fax (202) 619–5311; E-mail *clantz@usia.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Carolyn Lantz on all other inquiries and correspondence. Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition

with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at http://e.usia.gov/education/rfps. Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, D.C. time on Friday, February 11, 2000. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original proposal, one fully-tabbed copy, and seven copies including tabs A–E and appendices should be sent to: U.S. Department of State, Bureau of Educational and Cultural Affairs, Ref.: *ECA/PE/C–00–26*, Program Management, ECA/EX/PM, Room 336, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the US Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with the Bureau. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

The Bureau therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Bureau elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to achieve program objectives: Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. Institutional Capacity and Record: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

7. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

8. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives are recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

9. Cost-effectiveness/cost-sharing: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

10. Value to U.S.-Partner Country Relations: Proposed projects should receive positive assessments by the U.S. Department of State's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through the FREEDOM Support Act of 1992.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: December 14, 1999.

Evelyn S. Lieberman,

Under Secretary for Public Diplomacy, U.S. Department of State.

[FR Doc. 99–33062 Filed 12–20–99; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice 3181]

FY 2000 Ron Brown Fellowship Program; Request for Proposals

SUMMARY: Subject to the availability of funds for FY 2000, the Office of Academic Programs of the United States Department of State's Bureau of Educational and Cultural Affairs (ECA) announces an open competition for the Ron Brown Fellowship Program. The Bureau solicits detailed proposals from U.S. public or private non-profit organizations with at least four years of experience in conducting international academic exchange programs and meet the provisions described in IRS regulation 26 CAR 1.501c to develop and administer the FY 2000 Ron Brown Fellowship Program. Preference will be given to organizations that have placement experience at the graduate level and a demonstrated ability to conduct academic exchange programs. The level of funding for FY 2000 will be approximately $2,500,000. Organizations are invited to submit a proposal to conduct the final selection (from a pool of well-qualified candidates), placement, orientation, monitoring, evaluation and follow-on/alumni activities for approximately 42 Fellows from Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Former Yugoslav Republic of Macedonia (FYROM), Romania, Federal Republic of Yugoslavia (Serbia, Kosovo and Montenegro) (FRY), and Slovenia. Participants will be enrolled in two-year degree programs, or in one-year non-degree professional development programs (except for the one-year degree programs in law) at accredited U.S. academic institutions for study at the Masters' degree level in the fields of business administration, economics, educational administration, environmental management, journalism/mass communication, law, public administration, and public policy. Preference will be given to proposals with budgets that do not exceed $2,500,000.

Please note: This program will not support Ph.D. studies. Programs and projects must conform with Bureau requirements and guidelines outlined in the Solicitation Package. Bureau projects and programs are subject to the availability of funds.

Authority

The funding authority for the Ron Brown Fellowship Program is provided through the Support for East European Democracy (SEED) Act of 1989, targeted to advance the democratic and economic transition of Central and Eastern Europe. In order to comply with mandates for this program, the grantee organization is required to keep track of the spending for each of the participating countries under the FY 2000 Ron Brown Fellowship Program. Funds allocated for one country should not be used to support Fellows from other countries. Specific country allocations will be provided at the time of the award.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.''

Program Information

Overview

The FY 2000 Ron Brown Fellowship Program will provide funding for approximately 42 fellowships to citizens from Albania, Bosnia and Herzegovina, Bulgaria, Croatia, FYROM, Romania, FRY, and Slovenia. Fellowships will be distributed according to specified country-quotas. The goal of the Ron Brown program is to provide an opportunity for university graduates and young professionals who are selected through open merit-based competition in the aforementioned European countries to participate in quality graduate study programs at accredited universities throughout the United States. The fields of study are: business administration, economics, educational administration, environmental management, journalism/mass communication, law, public administration, and public policy. Fellowships will be awarded for one-year, non-degree professional development programs, except for one-year degree programs in law, or for two-year degree granting programs. Program

enhancements such as workshops, professional development and cultural enrichment activities, internships, alumni conferences, networking, etc. are integral components of the Ron Brown Fellowship Program and highly encouraged. Internships of up to three months for Fellows in both one-year and two-year degree programs and from three-to-five-months for non-degree professional development programs are also key components of the program. Our goal for FY 2000 is to award a greater number of Fellowships for two-year degree programs, and to attain equitable representation of the eight eligible fields while achieving wide distribution among the U.S. host universities. Fast-track placement ability is essential to enable the greater number of Fellows to start their academic program in the fall 2000. Clustering of Fellows should be avoided with no more than three Fellows at any one university. The Ron Brown Fellowship Program will not support Ph.D programs.

Guidelines

For FY 2000, as in previous years, program advertisement and participant recruitment will be the responsibility of the Public Affairs Sections (PAS) of the U.S. Embassies and/or the Fulbright commissions. PAS and/or commissions will screen applications for eligibility, arrange for TOEFL, GMAT and GRE testing where possible, conduct personal interviews, and compile a dossier on each qualified applicant. Each FAS and/or commission will compile a pool of applicants to be forwarded to the administering organization in early spring for the final selection.

Applicants are asked to develop a program plan to conduct the final selection, placement, monitoring, follow-on and alumni activities. The duration of the program should be for two academic years, 2000–2001 and 2001–2002. The program may not begin before May 1, 2000, and must be completed by December 31, 2002. Proposals should address and discuss in detail the following areas:

1. Final selection: describe in detail the process for the final selection of Fellows including method of reviewing a pool of qualified applications submitted by PAS' and/or Fulbright commissions, and specific details about the final selection panel.

2. Placement of Fellows: describe criteria for selecting host universities and measures to ensure participants' academic and cultural needs are met. A list of universities your organization works with to place scholars should be included.

3. Notification: describe plans for notifying applicants who have been selected for an award, including timely confirmation of placement, scheduling of pre-departure orientation, and all logistical arrangements.

4. Special programs: describe provisions for ESL or pre-academic programs, if necessary;

5. Orientation: describe plans for pre-departure, post-arrival and/or pre-academic orientation programs.

6. Enrichment activities: describe arrangements for cultural and professional development activities, internships, and other program enhancements including recommendations for workshops and alumni activities.

7. Monitoring/evaluating/tracking: describe methodologies for on-going monitoring and evaluation and adjustment of program accordingly. Mechanisms for alumni networking and alumni tracking should also be detailed.

8. Alumni Activities: Over 180 Fellows have completed the Ron Brown Fellowship Program since it was established in 1994. Alumni Associations have been formed in several participating countries. Describe plans to assist the development and expansion of these fledgling associations.

9. Program Identity: Describe ways to ensure that participants and alumni identify themselves as Ron Brown Fellows or Ron Brown Alumni.

10. Personnel: proposals should include curriculum vitae of personnel assigned to administer the Ron Brown program.

Participants

Fellows will be selected from a pool of applicants with a variety of professional and educational backgrounds. Since one of the purposes of the fellowships is to promote the development of professional expertise among the future leaders of central and eastern Europe, grant recipients should ideally be in the early stages of their careers, with perhaps a few years of work experience, a demonstrated ability for leadership, a clearly expressed purpose for studying in the United States, and a commitment to return home at the end of their fellowships to share their knowledge, skills and experience in the development of their countries. Fellows must be under the age of forty, possess the equivalent of a bachelor's degree, and demonstrate fluency in spoken and written English with a minimum TOEFL score of 550 or 213 on the computer-based test (or the ability to attain such a level following a limited ESL program prior to the beginning of their studies).

Visa/Insurance/Tax Requirements

All foreign participants must be sponsored under an Exchange Visitor Program on a J visa. Programs must comply with J–1 visa regulations and should reference this adherence in the proposal narrative. Ron Brown Fellows must comply with the two-year home residency requirement as stipulated by the J-visa guidelines. It is the expressed intent of this program that Fellows return immediately to their home country following completion of the academic and practical components of their program. Please refer to program specific guidelines in the Application Package for further details. Administration of the program must be in compliance with reporting and withholding regulations for federal, state, and local taxes, as applicable. Organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

Participants will be covered by Department of State-sponsored Medical Insurance. The administering organization will be responsible for enrolling the participants in the insurance program.

Budget Guidelines

Funding for the FY 2000 Ron Brown Fellowship Program is anticipated at $2,500,000. Applicants must submit a comprehensive line item budget for general program costs, participant program costs, alumni costs, and administrative costs. There must be a summary budget as well as a breakdown reflecting both the administrative budget and the program budget. Please refer to the application packet for complete formatting instructions. Administrative costs, including indirect costs, should not exceed 20% of the total request.

The Bureau reserves the right to reduce, revise, or increase the proposal budget in accordance with the needs of the program.

Allowable costs for the program include the following:

(1) General Program Costs
(2) Participant Program Costs
(3) U.S. Administrative Costs
(4) Overseas Administrative Costs
(5) Alumni Activities

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Medical insurance for participants will be paid directly by the Bureau of Educational and Cultural Affairs and,

therefore, should not be included as a line-item cost in the program budget. However, a modest line-item may be included for health insurance for universities not accepting the ECA policy.

Diversity, Freedom and Democracy Guidelines

Pursuant to Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle in the program. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy, the Bureau shall take steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries. Proposals should reflect advancement of this goal in their program content, to the full extent deemed feasible.

Year 2000 (Y2K) Compliance Requirement

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with the Bureau. The inability to process information in accordance with Federal requirements could result in grantees being required to return funds that have not been accounted for properly.

The Bureau therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.otpolicy.gsa.gov.

Announcement Title and Number

All correspondence with the Bureau concerning this RFP should refer to: The Ron Brown Fellowship Program, reference number *ECA/A/E/EUR–00–05.*

FOR FURTHER INFORMATION, CONTACT: The U.S. Department of State, Annex 44, Bureau of Education and Cultural Affairs (ECA), Office of Academic Exchange Programs, European Branch, ECA/A/E/EUR Room 238, 301 4th Street, S.W., Washington, D.C. 20547; Telephone: (202) 619–4420; Fax: (202) 619–4927; E-mail: ewingate@usia.gov to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Ms. Effie Wingate on all inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

To Download a Solicitation Package via Internet

The entire Solicitation Package may be downloaded from the following website: http://www.usia.gov/education/rfps. Please read all information before downloading.

Deadline For Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5:00 p.m. Washington, D.C. time on Thursday, February 3, 2000. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted.

Applicants must follow all instructions given in the Solicitation Package. The original and nine copies of the completed application, including required forms, should be sent to: U.S. Department of State, Annex 44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/E/EUR–00–05, Office of Program Management, ECA/XE/PM, Room 336, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. This material must be provided in ASCII text (DOS) formatted with a maximum line length of 65 characters. These files will be transmitted electronically to the Public Affairs Sections and Fulbright Commissions overseas for their review, with the goal of reducing the time it takes to receive their comments for the grant review process.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Department of State's Office of the Coordinator for SEED programs and the Offices of Public Affairs and Fulbright commissions overseas where appropriate. Proposals may also be reviewed by the Department of State, Office of the Legal Adviser or by other Bureau elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Program Planning and Management: Proposals should exhibit substance, precision, innovation, and relevance to the Bureau's mission. Objectives should be reasonable, feasible, and flexible and proposals should clearly demonstrate how the organization will meet these objectives. A detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and work plan should adhere to the program overview and guidelines described above.

2. Institutional Capacity and Record: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by the grants staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

3. Multiplier Effect/Impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and

establishment of long-term institutional and individual linkages.

4. Cost-effectiveness/Cost-sharing: The overhead and administrative components of the proposal, including salaries should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

5. Placement experience: Proposals should demonstrate the organization's ability and experience with graduate level, fast-track placements at U.S. universities.

6. Professional and Academic Contacts: Proposals should demonstrate substantive staff knowledge of the relevant academic fields and professions to ensure productive engagement with professional and academic contacts in every phase of program planning and implementation, including the arrangement of internships and selection panels.

7. Support of Diversity: Proposals should demonstrate the organization's commitment to promoting the awareness and understanding of diversity and should include a strategy for achieving diverse group of Fellows and host institutions.

8. Project Evaluation: Proposals should include a plan to evaluate the project's success, both during and after the program. A draft survey questionnaire or other technique and a description of methodologies that can be used to link the outcomes to original project objectives should also be included. Grantee organization will be expected to submit quarterly program and financial reports.

9. Alumni Tracking and Follow-on Activities: Proposals should provide a plan for effective tracking of current and future Alumni and demonstrate the organization's willingness to provide data to and coordinate tracking with the Bureau, Public Affairs Sections and/or Fulbright commissions. Proposals may also include a plan for continued follow-on activity (without Bureau support) which insures that Bureau-supported programs are not isolated events.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any ECA representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposed budgets in accordance with the needs of the program and the availability of funds.

Awards made will be subject to quarterly reporting and evaluation requirements.

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal State Department procedures.

Notification

All applicants will be notified of the results of the review process on or about March 31, 2000.

Dated: December 14, 1999.

Evelyn S. Lieberman,

Under Secretary for Public Diplomacy and Public Affairs.

[FR Doc. 99–33061 Filed 12–20–99; 8:45 am]

BILLING CODE 4710–11–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements filed during the week ending December 10, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–6602.
Date Filed: December 7, 1999.
Parties: Members of the International Air Transport Association.
Subject: PTC23 EUR–SEA 0085 dated 3 December 1999; Expedited Europe-South East Asia Resolution 002hh Intended effective date: 1 January 2000.

Docket Number: OST–99–6603.
Date Filed: December 7, 1999.
Parties: Members of the International Air Transport Association.
Subject: PTC31 N&C/CIRC 0106 dated 3 December 1999; Expedited TC3–Central America, South America Resolution 002L; Intended effective date: 15 January 2000.

Docket Number: OST–99–6604.
Date Filed: December 7, 1999.
Parties: Members of the International Air Transport Association.
Subject: PTC31 N&C/CIRC 0103 dated 3 December 1999, Expedited Areawide TC31 North and Central Pacific Resolution 015v r–1, PTC31 N&C/CIRC 0104 dated 3 December 1999, Expedited TC3 (except Japan)-North America, Caribbean Expedited Resolutions 002j r–2, 077p r–3, 077r r–4, PTC31 N&C/CIRC 0105 dated 3 December 1999, Expedited Japan-North American, Caribbean Expedited Resolutions 001b r–5, 002rr r–6, 073hh r–7, Intended effective date: 15 January 2000.

Docket Number: OST–99–6613.
Date Filed: December 8, 1999.
Parties: Members of the International Air Transport Association.
Subject: PTC123 0083 dated 23 November 1999 Resolution 015v (r–1), PTC123 0085 dated 23 November 1999 Mid Atlantic (r–2 to r–7), PTC123 0086 dated 23 November 1999 South Atlantic (r–8 to r–20), Fares: PTC123 Fares 0034 dated 3 December 1999 (South Atlantic), PTC123 Fares 0035 dated 3 December 1999 (Mid Atlantic), Intended effective date: 1 March 2000.

Docket Number: OST–99–6627.
Date Filed: December 8, 1999.
Parties: Members of the International Air Transport Association.
Subject: PTC123 0084 dated 23 November 1999, TC123 North Atlantic Resolutions (r–1 to r–17), Fares: PTC123 Fares 0033 dated 3 December 1999 (North Atlantic), Minutes: PTC123 0088 dated 7 December 1999, Intended effective date: 1 March 2000.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–33016 Filed 12–20–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ending December 10, 1999

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–99–6624.
Date Filed: December 8, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: January 5, 2000.
Description: Application of Federal Express Corporation pursuant to 49 U.S.C. Section 41102 and Subpart Q, applies for issuance of a new certificate of public convenience and necessity authorizing Federal Express to provide scheduled foreign air transportation of property and mail between points in the United States, on the one hand, and points in Italy, on the other hand, via intermediate points and beyond Italy without limitation. Federal Express further requests authority to operate its services between the U.S. and Italy in conjunction with other scheduled all-cargo

services operated by Federal Express between the U.S. and points in Europe, the Middle East, Africa and the Asia/Pacific region, subject to existing bilateral provisions.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–33017 Filed 12–20–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from January 10–13, 2000, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the Naval Air Station Pensacola, 190 Radford Blvd., Pensacola, Florida.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Harrell, Executive Director, ATPAC, Terminal and En Route Procedures Division, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held January 10 through January 13, 2000, at the Naval Air Station Pensacola, 190 Radford Blvd., Pensacola, Florida.

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than January 7, 2000. The next quarterly meeting of the FAA ATPAC is planned to be held from April 3–6, 2000, in Washington, DC.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on December 10, 1999.

Eric Harrell,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 99–33042 Filed 12–20–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATI0N

Federal Aviation Administration

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Chicago Midway Airport, Chicago, Illinois

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Chicago Midway Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before January 20, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 222, Des Plaines, IL 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas R. Walker, Commissioner of the City of Chicago Department of Aviation at the following address: Chicago O'Hare International Airport, P.O. Box 66142, Chicago, IL 60666.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Chicago Department of Aviation under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Philip M. Smithmeyer, Manager, Chicago Airports District Office, 2300 East Devon Avenue, Room 222, Des Plaines, IL 60018, (847) 294–7335. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Chicago Midway Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 24, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Chicago Department of Aviation was substantially complete within the requirements of section 158.24 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 23, 2000.

The following is a brief overview of the application.

PFC application number: 00–07–C–00–MDW.

Level of the proposed PFC: $3.00.

Actual charge effective date: September 1, 1993.

Revised estimated charge expiration date: January 1, 2047.

Total estimated PFC revenue: $630,948,770.00.

Brief description of proposed projects: Reconstruct Taxiway P, Service Road Reconstruction Along Taxiway N, Taxiway K Rehabilitation Between Runway 31C and Taxiway V, Taxiway J Rehabilitation Between Taxiway W and Runway 4L, Runway 31C Exit Taxiway Rehabilitation, Runway 13C Hold Pad Rehabilitation, Taxiway N and Taxiway Q Rehabilitation, Apron Edge Taxiway Rehabilitation, Terminal Apron Construction, Additional Residential Insulation, Midway Radio Trunking System, Midway Equipment Acquisition 1998–2003, Blast Fences Northeast and Northwest Corners, Land Acquisition Parcel #130, Land Acquisition Parcel #131, Land Acquisition Parcel #132, Concourse Building, Explosive Detection System, Taxiway/Taxilane, Aircraft Parking Apron Construction, Parking Structure Blast Mitigation, On-Airport Roads, Airline Equipment.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Chicago Department of Aviation.

Issued in Des Plaines, Illinois on December 9, 1999.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 99–33041 Filed 12–20–99 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (00–05–C–YKM) To Impose and Use, and Impose Only, the Revenue From a Passenger Facility Charge (PFC) at Yakima Air Terminal-McAllister Field, Submitted by the Yakima Air Terminal Board, Yakima Air Terminal-McAllister Field, Yakima, Washington

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use, and impose only, PFC revenue at Yakima Air Terminal-Mcallister Field under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 20, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250, Renton, Washington, 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bob Clem, Airport Manager, at the following address: 2400 West Washington Avenue, Yakima, Washington 98903.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Yakima Air Terminal-McAllister Field, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue, SW, Suite 250, Renton, Washington, 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (00–05–C–00–YKM), to impose and use, and impose only, PFC revenue at Yakima Air Terminal-McAllister Field, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On December 13, 1999, the FAA determined that the application to impose and use, and impose only, the revenue from a PFC submitted by Yakima Air Terminal Board, Yakima, Washington, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 14, 2000.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: June 1, 2000.

Proposed charge expiration date: August 1, 2002.

Total requested for use approval: $297,687.

Total requested for collection authority: $480,000.

Brief description of proposed project: Impose and Use: Update Airport Layout Plan; Install Visual Navigational Aids; Purchase Radio Equipment; B Taxiway Rehabilitation. Impose Only: Construct West Perimeter Road.

Class or classes of air carriers, which the public agency has requested not be required to collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above or under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue, S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Yakima Air Terminal-McAllister Field.

Issued in Renton, Washington on December 13, 1999.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 99–33040 Filed 12–20–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Certification Basis for Garlick Helicopters, Inc. Model GH205A Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Type Certification Basis.

SUMMARY: This document establishes the type certification basis for Garlick Helicopters, Inc. Model GH205A helicopters. It is published in the interest of keeping the public informed and to advise all interested persons of the airworthiness standards applicable to Model GH205A helicopters.

FOR FURTHER INFORMATION CONTACT: Richard Monschke, Aerospace Engineer, FAA, Rotorcraft Directorate, Fort Worth, Texas 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Background

On December 9, 1993, Garlick Helicopters, Inc., of Hamilton, Montana, applied for a transport category rotorcraft type certificate under the provisions of 14 CFR 21.27, ''Issue of type certificate: surplus aircraft of the Armed Forces of the United States,'' for former U.S. Army Model UH–1H and UH–1V helicopters, to be redesignated as Garlick Helicopters, Inc. Model GH205A helicopters. The later military Model UH–1V helicopters contain avionics and internal equipment changes only and is considered identical to Model UH–1H helicopters for the purposes of FAA certification.

Section 21.27 provides two methods for obtaining a type certificate on a military surplus aircraft designed and constructed in the United States and accepted for operational use by the U.S. Armed Forces. The type certificate may be obtained if the surplus aircraft (1) is a counterpart of a previously type certificated civil aircraft, or (2) meets the airworthiness standards in effect when the particular model was accepted for operational use by the U.S. Armed Forces, subject to any special conditions or later amendments necessary to ensure an adequate level of airworthiness for the aircraft. The U.S. Army procurement offices in St. Louis, Missouri, has stated that the UH–1H model helicopter was first accepted for operational use by the U.S. Army on September 8, 1966, and no similar civil version was certificated until June 13, 1968. Hence, no similar civil model was certificated prior to the first operational use of the military UH–1H model helicopter. Therefore, the

Model GH205A helicopter must comply with the airworthiness standards specified in § 21.27(f) at the regulation amendment level in effect on September 8, 1966.

Section 21.27(d) permits the FAA to relieve an applicant from strict compliance with an airworthiness standard in the certification basis, provided the stated conditions are satisfied. Additionally, § 21.27(e) permits the FAA to adopt special conditions or later airworthiness requirements if the FAA finds that the requirements stated in § 21.27(e) and (f) would not ensure an adequate level of airworthiness of the type design. Special conditions are airworthiness safety standards promulgated in accordance with §§ 11.28 and 21.16, which include public participation, and establish a level of safety equivalent to that contained in the regulations.

A notice that invited public comments on the proposed certification basis including the Special Condition concerning the T53–L–13 engine for the Model GH205A helicopters was published in the **Federal Register**, on July 2, 1997 (62 FR 35872). Numerous comments, both for and against, were received on the proposed certification basis.

General Discussion of Public Comments

The FAA has carefully reviewed and considered all comments in the development of the type certification basis and the regulatory standards contained therein for Model GH205A helicopters. Because of the volume of comments, comments of a similar nature are answered as a group.

After receipt of the comments from the notice of proposed type certification basis, the FAA decided to issue a separate Special Condition for the T53–L–13 engines. In that Final Special Condition; request for comments, the FAA disposed of the comments relating to the engine. Special Condition No. 29–006–SC, issued and effective on September 22, 1999 (64 FR 52646 September 30, 1999), promulgates the additional safety standards that the FAA Administrator considers necessary to establish a level of safety for the T53–L–13 surplus military aircraft engines installed in the Model GH205A helicopters equivalent to that established by the existing airworthiness standards.

Discussion of Comments

Several commenters suggested that the Model UH–1H helicopters while being flown by the U.S. Army had a safe operational record. These commenters state that Model UH–1H helicopters are proven aircraft with some 20 million fleet hours. The commenters state that this satisfactory service history shows that the Model UH–1H helicopters are safe and reliable. One commenter reports that they have flown Model UH–1H helicopters in the public-use role for over 46,000 flight hours of accident-free operations. Another commenter reports that they have flown Model UH–1 helicopters accumulating over 16,000 flight hours without an incident or accident caused by mechanical failure or maintenance problems.

In general, the FAA agrees that Model UH–1H helicopters have demonstrated a satisfactory military service history. However, for FAA type certification in the civil transport rotorcraft category, more than satisfactory military service history is required. In some instances, military qualifications and acceptance do not meet the safety requirements specified in 14 CFR parts 21 and 29. Since the proposed Model GH205A helicopters will be flown in accordance with 14 CFR parts 91 and 135 operating requirements, those operations must meet the minimum appropriate level of safety commensurate with the category for which certification is requested. Therefore, in accordance with 14 CFR 21.27, the FAA will require Garlick Helicopters, Inc. to meet the appropriate regulation and certain special conditions deemed necessary to ensure the appropriate minimum level of safety.

Some public aircraft operators commented that the proposed Model GH205A helicopters would benefit the taxpayers. They argue that the taxpayers, who must pay for fire fighting and rescue services, have already paid for these helicopters as military aircraft and should continue to benefit from their operation.

The FAA does not evaluate applications for type certificates based on economic considerations. The type certification basis is established by mandating applicable minimum safety standards. The FAA presumes that the type certificate applicant has or will perform an economic analysis based on the regulatory requirements.

Several comments were received concerning the economic impact of the civil certification of military surplus helicopters. One commenter stated that infusing large numbers of military surplus aircraft into the civil market would have a much more detrimental affect on the industry than any benefits that might be realized. Not only would it affect the major manufacturers and large commercial operators, it would also affect small companies and individual owners who have invested in standard category aircraft. These commenters further state that the certification of military surplus helicopters would ''devalue the civil fleet and the owners of civil-certified standard category helicopters would be at a competitive disadvantage.'' They further emphasized that ''the civil market has already been damaged enough through national park regulations and loss of public-use contracts to surplus aircraft. Any further pursuit of an initiative to certify surplus aircraft could very well harm the industry in such a manner that it would not recover.'' Another commenter stated, ''My concern is trying to make a profit by competing with people with lesser standards operating surplus government helicopters.''

The FAA is sensitive to both sides of the economic issues associated with this project. However, in accordance with 14 CFR 21.27, an applicant is entitled to a type certificate for a surplus aircraft of an Armed Force of the United States if it complies with certain appropriate regulations. The FAA's focus is on assuring that the minimum level of safety is maintained.

One commenter states that the sudden expansion of the number of operators in the industry due to the affordability and access to surplus aircraft will result in an increased workload on an already overloaded FAA inspection system and would necessitate the need for additional manpower to regulate that growth.

The FAA continually assesses the resources needed to regulate the industry. However, the FAA has no basis to deny a type certificate to an applicant that has met all the appropriate regulatory requirements.

Several commenters state that the proposed certification basis will assure a proper level of safety for a transport category rotorcraft. These commenters emphasize that the proper level of safety is generated when the proposed regulatory criteria is met during the upgrade from military surplus to transport category rotorcraft and when the aircraft are properly maintained during service.

The FAA agrees. The type certification basis and special conditions will provide a high level of safety for Model GH205A helicopters. The airframe, including electrical and mechanical systems as well as the engine, will be inspected and overhauled in accordance with an FAA-approved procedure. Model GH205A helicopters will be produced in accordance with an FAA-approved type design. A FAA-approved production and quality system will be maintained

with FAA oversight. The Fort Worth Aircraft Evaluation Group will review the instructions for continued airworthiness for acceptability. The Rotorcraft Certification Office will review and approve the Airworthiness Limitations.

One commenter states that certification of Model GH205A helicopters would cause an irreparable setback to rotorcraft aviation due to the high noise signature of the similar Model UH–1 helicopters, which has already been responsible for a negative perception and acceptance of helicopters by the general public. Certain helicopter models are currently banned from several geographical areas in the civil sector because of their high ambient noise level.

The Model GH205A helicopter certification basis includes 14 CFR part 36, Appendix H, latest Amendment, ''Noise Requirements for Helicopters under Subpart H''. Further, a prototype Model GH205A helicopter has been tested and found to be in compliance with the current Part 36, Appendix H, noise certification requirements. The Model GH205A helicopters will basically have the same noise signature as existing civil certified Bell Helicopter Textron, Inc. (Bell) Model 205A helicopters.

Several commenters point out that there was a Notice of Proposed Rulemaking (NPRM No. 94–12) published in the **Federal Register** on April 21, 1994, which proposed to rescind the current rules providing for the issuance of a type certificate to surplus military aircraft previously accepted for use by the U.S. Armed Forces. They state that the airworthiness standards specified for compliance are no longer appropriate for normal or transport category helicopter type certification and do not offer the same levels of safety to the general public as current amendment levels of FAR Parts 27 and 29.

While the FAA agrees that several amendments to the normal and transport helicopter airworthiness standards, FAR Parts 27 and 29, have been incorporated to enhance flight safety since the U.S. military first accepted delivery of the Model UH–1 series helicopters, retroactive compliance to later amendment levels for previously-certificated civil helicopters has not been required of any type certificate holder. There are currently many type certificated helicopters on the FAA U.S. Registry, similar to Model GH205A helicopters, that were type certificated to the airworthiness standards in existence at the time the Model UH–1 series helicopters entered military service. The type certification basis established for Model GH205A helicopters meets the regulatory requirements of the Bell Model 205A helicopters, and also includes certain requirements imposed by later FAR Part 29 and FAR Part 33 amendment levels to achieve a level of safety equal to that required of current type certificate applicants. The FAA recognizes that the type, quantity, and potential civil usage of aircraft now being declared surplus by the U.S. Armed Forces has changed significantly since the World War II era, hence the promulgation of NPRM 94–12. NPRM 94–12 was never adopted. The FAA has a rigorous airworthiness compliance plan for the Model GH205A helicopters, including provisions for maintaining the continued airworthiness of these helicopters, such that no unfair advantage of Garlick Helicopters, Inc. over current helicopter manufacturers is intended and the type certification basis will result in a safe helicopter.

Several commenters state that the surplus Model UH–1 series airframes are similar in appearance to civil-certified Bell Model 205 helicopters, but do not meet FAR Part 29 airworthiness requirements due to significant differences in the rotor drive systems configuration, control systems design and construction materials. They state that the tail rotor on the Bell Model 205 helicopters is located on the right side of the tailboom with a push/pull tube type of control system, while on the Model UH–1 series helicopters, the tail rotor is located on the left side of the tail boom and controlled via a cable/silent chain system. A commenter further states that the hydraulic boost actuators for the collective and cyclic main rotor primary control systems on the Bell Model 205 helicopters are required by the FAA to have redundant servo valves while the corresponding actuators on the Model UH–1 series helicopters contain a single servo valve. In addition, a commenter states that many airframe components/detail parts on the Model UH–1 series helicopters may have been replaced by the military with breakout parts. Also, military design specifications in some cases allowed the substitution of aluminum and magnesium in the Model UH–1 series helicopters instead of steel for similar parts on the Bell Model 205 helicopters.

While the FAA is aware of these differences, it has determined that an applicant can conduct a design review of the Model UH–1H series helicopters to show compliance and address those areas which require modification in order to comply with the Model GH205A helicopters' type certification basis, which will result in a safe helicopter.

In accordance with FAR 21.31, Garlick Helicopters, Inc. will be required to have a complete set of FAA-approved type design data which defines the configuration and design features of the Model GH205A helicopters' type design shown to comply with the Model GH205A helicopters' type certification basis. A complete drawing package will be required including any drawings for replacement or upgraded parts utilized from the original equipment manufacturer or other FAA production approval holders.

FAA-approved procedures will be utilized to conduct receiving inspections on each Model GH205A helicopters' airframe; to purge all breakout parts; to inspect and, if necessary, overhaul all major systems; to establish criteria for use of life-limited parts; and to conform the helicopter to a FAA-approved configuration.

Since the FAA originally imposed the dual servo valve hydraulic flight control actuator requirement on the Bell Model 205 helicopters' type certification, over 20 million military and civil flight hours have been accrued with acceptable service history on both military Model UH–1 and civil Bell Model 204 helicopters, which have single servo valve hydraulic actuators. Therefore, service history for the single servo actuators has proven to be satisfactory. However, Model GH205A helicopters will be subjected to extensive ground and flight tests to demonstrate the acceptability of the single servo actuators utilized in the surplus Model UH–1 series helicopters. If these tests are successful, an equivalent level of safety will have been demonstrated for § 29.695, Power boost and power-operated control system.

Additionally, in accordance with § 21.27(e), the FAA has determined that the following sections must be included in the Model GH205A helicopters' type certification basis:

- 14 CFR part 29.2, Amendment 29–32, Special retroactive requirements. This Section requires each occupant's seat to be equipped with a safety belt and shoulder harness.
- 14 CFR part 29.785, Amendment 29–24, Seats, berths, safety belts, and harnesses. This Section describes the loads and other criteria that the seat belt and shoulder harness must meet.
- 14 CFR part 29.853, Amendment 29–18, Compartment interiors. This section describes the requirements for cabin interiors. Of particular interest are the material burn testing requirements.

Several commenters state that the proposed type certification basis will not assure a level of safety equal to other transport category helicopters currently certified, that use of obsolete certification regulations will not meet the same level of safety required of aircraft certified under modern certification regulations, and that Model UH–1H helicopters were built under military requirements while the Bell Model 205 helicopters were designed for civilian use and therefore meet a higher standard.

14 CFR 21.27 allows a type certification basis other than the most current certification regulations. As previously discussed, retroactive compliance for previously certificated civil helicopters or their derivatives has not been required of any type certificate holder. Bell Model 205 helicopters were certificated to CAR 7 rules. The FAA has determined that the Model GH205A helicopters' type certification basis at FAR 29, Amendment 1, certain later Amendments of FAR 29, equivalent safety finding requirement, CAR 13 at Amendments 13–1, 13–2 and 13–3, certain later Amendments of FAR 33, and special conditions provide a satisfactory level of safety commensurate with Bell Model 205 helicopters.

Type Certification Basis

Pursuant to the provisions of § 21.27, the type certification basis of the Garlick Helicopters, Inc. Model GH205A helicopters is:

1. 14 CFR part 29 of the Federal Aviation Regulations (FAR) effective August 12, 1965, as amended by Amendment 29–1, Category B, except:

- Section 29.2 of the FAR effective September 16, 1991, as amended by Amendment 29–32.
- Section 29.695 through Amendment 29–1, Category B, Finding of Equivalent Safety.
- Section 29.785 of the FAR effective December 6, 1984, as amended by Amendment 29–24.
- Section 29.853 of the FAR effective March 6, 1980, as amended by Amendment 29–18.
- Section 29.1529 of the FAR effective October 14, 1980, as amended by Amendment 29–20.

2. 14 CFR part 36 of the FAR, Appendix H, latest Amendment in existence at the time of certification.

3. Part 13 of the Civil Air Regulations (CAR) effective August 12, 1957, as amended by Amendment 13–1.

4. Part 13 of the CAR effective May 17, 1958, as amended by Amendment 13–2.

5. Part 13 of the CAR effective October 1, 1959, as amended by Amendment 13–3.

6. 14 CFR Section 33.4 of the FAR effective October 14, 1980, as amended by Amendment 33–9.

7. 14 CFR Section 33.14 of the FAR effective March 26, 1984, as amended by Amendment 33–10.

8. Special Condition No. 29–006–SC.

Additional Special Conditions

The necessity for additional special conditions may become evident as more experience is gained during this type certification program. Any additional special conditions will be promulgated in accordance with §§ 11.28 and 21.16.

Post-Certification Activity

The design evaluation does not end with the issuance of the type certificate. Regulations require type certificate holders to submit various reports and data on the helicopters' service experience and to perform periodic inspections and maintenance necessary to assure continued airworthiness. The FAA continues to monitor the safety performance of a design after the type design is approved and the aircraft is introduced into service through the various reports and data that the FAA receives, and with post-certification design reviews when necessary. The airworthiness standards, such as Part 29 and Part 33, and the operational standards, such as parts 91 and 135, are amended from time to time to incorporate new technologies and to upgrade the existing level of safety. If, during an evaluation, an unsafe condition is found as a result of service experience and that condition is likely to exist or develop in other products of the same type, the FAA issues an AD under part 39 to require a change to the type design or to define special inspection or operational limitations. In effect, these are retroactive applications of required type design changes.

Issued in Fort Worth, Texas on December 9, 1999.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–33039 Filed 12–20–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Board of Directors on Thursday, January 13, 2000. The meeting begins at 2:00 p.m. The letter designations that follow each item mean the following: (I) is an ''information item;'' (A) is an action item; (D) is a discussion item. This meeting includes the following items: (1) Introductions and ITS America Antitrust Policy and Conflict of Interest Statements; (2) Review and Approval of Board Meeting Minutes for August 10, 1999, and November 7, 1999 (A); (3) US DOT ITS Federal Report (I/D); (4) Executive Committee Report (I); (5) Coordinating Council Report (A); (6) National ITS Deployment Strategy Project (I); (7) State Chapters Council Report (I); (8) ITS America Association: Business Plan and Congressional Tour Report; (9) Report of the ITS World Congress: Toronto World Congress Update; Other International Activities (I/A/D); (10) 2000 ITS America Annual Meeting Update (I); (11) President's Report (External Issues) (I); (12) Other Business; (13) At 3:30 p.m. A Business Session open only to Board Members, ITS America Members and Staff.); (14) Report of the Finance Committee: 1999 Budget Status; Resource Allocation Plans; and Ratification of Executive Committee Approval of 2000 Budget; (15) President's Report (Internal Issues); (16) Presentation of Slates of Nominees for Board and Officers; Coordinating Council Officers; At-Large Seats; and Committee/Task Force Chairs; and State Chapters Council Officers (A); (17) Other Business: 2000 Board of Directors Meeting Schedule (I); (18) Adjournment until May 4, 2000, Board of Directors Meeting #34 held in conjunction with the ITS America Annual Meeting in Boston, MA.

ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities.

The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA) 5 USC app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Board of Directors of ITS AMERICA will meet on Thursday, January 13, 2000, from 2:00 p.m.–6:00 p.m.

ADDRESSES: Marriott Wardman Park Hotel, 2660 Woodley Road, NW,

Washington, DC Phone: (202) 328–2000. Fax: (202) 234–0015.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue, SW., Suite 800, Washington, D.C. 20024. Persons needing further information or to request to speak at this meeting should contact Marlene Vence-Crampton at ITS AMERICA by telephone at (202) 484–4847, or by Fax at (202) 484–3483. The DOT contact is Kristy Frizzell, ITS JPO FHWA, HOIT, Washington, DC 20590, (202) 366–0722. Office hours are from 8:30 a.m. to 5:00 p.m., e.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: December 16, 1999.

Jeffrey Paniati,

Deputy Director, ITS Joint Program Office.

[FR Doc. 99–33038 Filed 12–20–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33827]

Union Pacific Railroad Company—Trackage Rights Exemption—CBEC Railway, Inc.

CBEC Railway, Inc. (CBEC) has agreed to grant local trackage rights to Union Pacific Railroad Company (UP) over approximately 6.2 miles of CBEC trackage extending between CBEC milepost 0.0 and CBEC milepost 6.2, near Council Bluffs, IA.

The transaction is scheduled to be consummated on or after the December 14, 1999 effective date of the exemption.

The purpose of the trackage rights is to permit UP to provide direct service to a major utility customer on CBEC.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33827, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Robert T. Opal, Esq., Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: December 13, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–32904 Filed 12–20–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices; International Financial Institution Advisory Commission

AGENCY: Department of the Treasury.

ACTION: Notice of meetings.

SUMMARY: Under section 603 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1999, the International Financial Institution Advisory Commission (the ''Commission'') shall advise and report to the Congress on the future role and responsibilities of the international financial institutions (defined as the International Monetary Fund, International Bank for Reconstruction and Development, European Bank for Reconstruction and Development, International Development Association, International Finance Corporation, Multilateral Investment Guarantee Agency, African Development Bank, African Development Fund, Asian Development Bank, Inter-American Development Bank, and Inter-American Investment Corporation), the World Trade Organization, and the Bank for International Settlements.

DATES: The seventh meeting of the Advisory Commission will be held on January 3, 2000, beginning at 4:00 p.m. and ending at 6:00 p.m. The eighth meeting of the Advisory Commission will be held on January 4, 2000, beginning at 9:00 a.m. and ending tentatively at 3:00 p.m. The locations for both meetings is not yet determined..

FOR FURTHER INFORMATION CONTACT: Designated Federal Official: William McFadden, Senior Policy Advisor, Office of International Monetary and Financial Policy, Room 4444, Department of the Treasury, 1500 Pennsylvania Avenue N.W., Washington, D.C. 20220. Telephone number 202–622–0343, fax number (202) 622–7664.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meetings

The Commission members will focus on exchange rate policy, income inequality and debt forgiveness.

Procedure

These meetings are open to the public. Please note that the meetings may close early if all business is finished. Members of the public may submit written comments. If you wish to furnish such comments, please provide 16 copies of your written material to the Designated Federal Official. If you wish to have your comments distributed to members of the Commission in advance of the seventh or eighth meeting, 16 copies of any written material should be provided to the Designated Federal Official no later than December 28, 1999.

Dated: December 14, 1999.

William McFadden,

Designated Federal Official.

[FR Doc. 99–33043 Filed 12–20–99; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Office of Thrift Supervision

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Joint Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Submission for OMB Review; Joint Comment Request.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the OTS, the Board, and the FDIC (collectively, the ''agencies'') hereby give notice that they plan to submit to the Office of Management and Budget (OMB) requests for review of the information collection systems described below. The

Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

On September 3, 1999, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), requested public comment for 60 days on the extension, without revision, of the following currently approved information collections: the Annual Report of Trust Assets (FFIEC 001) and the Annual Report of International Fiduciary Activities (FFIEC 006).

DATES: Comments must be submitted on or before January 20, 2000.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments should refer to the OMB control number(s) and will be shared among the agencies.

OCC: Written comments on the FFIEC 001 and 006 should be submitted to the Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Third Floor, Attention: 1557–0127 (FFIEC 001 and 006). Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov. Comments will be available for inspection and photocopying at the OCC's Public Reference Room, 250 E Street, S.W., Washington, D.C. 20219 between 9:00 a.m. and 5:00 p.m. on business days. Appointments for inspection of comments may be made by calling (202) 874–5043.

OTS: Written comments on the FFIEC 001 should be submitted to the Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, Attention: 1550–0026. Hand deliver comments to Public Reference Room 1700 G Street, NW, lower level, from 9:00 a.m. to 4:00 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755; or (202) 906–6956 (if comments are over 25 pages). Send e-mail to ''public.info@ots.treas.gov'', and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G St. NW, from 9:00 a.m. until 4:00 p.m. on business days.

Board: Written comments on the FFIEC 001 and 006 should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW Comments received may be inspected in room M–P–500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.12 of the Board's Rules Regarding Availability of Information, 12 CFR 261.12(a).

FDIC: Written comments on the FFIEC 001 should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov]. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, DC, between 9:00 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of an agency's submission may be obtained by contacting:

OCC: Jessie Gates, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

OTS: Mary Rawlings-Milton, OTS Clearance Officer, (202) 906–6028, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

Board: Mary M. West, Chief, Financial Reports Section, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, D.C. 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins, (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

FDIC: Steven F. Hanft, FDIC Clearance Officer, (202) 898–3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC. 20429.

SUPPLEMENTARY INFORMATION:

Proposal to extend for three years without revision the following currently approved collections of information

Report Title: Annual Report of Trust Assets and Annual Report of International Fiduciary Activities

Form Number: FFIEC 001 and FFIEC 006

Frequency of Response: Annual

Affected Public: Business or other for profit

For OCC:

OMB Number: 1557–0127.

Number of Respondents: 809 (FFIEC 001) 100 (FFIEC 006).

Estimated Average Time per Response: 4.4 burden hours (FFIEC 001). 4.0 burden hours (FFIEC 006).

Estimated Total Annual Burden: 3,960 burden hours

For OTS:

OMB Number: 1557–0026.

Number of Respondents: 101 (FFIEC 001).

Estimated Average Time per Response: 4.08 burden hours (FFIEC 001).

Estimated Total Annual Burden: 412 burden hours.

For Board:

OMB Number: 7100–0031.

Number of Respondents: 511 (FFIEC 001), 116 (FFIEC 006).

Estimated Average Time per Response: 3.82 burden hours (FFIEC 001), 4.0 burden hours (FFIEC 006).

Total Annual Burden: 2,416 burden hours.

For FDIC:

OMB Number: 3064–0024.

Number of Respondents: 1,602 (FFIEC 001).

Estimated Average Time per Response: 3.55 burden hours (FFIEC 001).

Estimated Total Annual Burden: 5,683 burden hours (FFIEC 001).

General Description of Reports

This information collection (FFIEC 001 and FFIEC 006) is mandatory: 12 U.S.C. 161 and 1817 (for national banks), 12 U.S.C. 1464, 1725, 1730 (for thrift institutions), 12 U.S.C. 248(a)(1) and (2) and 1844(c) (for state member banks and bank holding companies), and 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks). The FFIEC 006, collected by the OCC and the Board, and Schedule E–Fiduciary Income Statement on the FFIEC 001, collected by all of the agencies, are given confidential

treatment (5 U.S.C. 552(b)(8)). Small businesses (i.e., small banks) are not affected.

Abstract

These interagency reports collect information on fiduciary asset totals and activities. They are used to monitor changes in the volume and character of discretionary trust activity and the volume of nondiscretionary trust activity and to determine resource needs for supervisory purposes. The data are also used for statistical and analytical purposes. No changes are proposed to the FFIEC 001 or the FFIEC 006 reporting forms or instructions.

The agencies did not receive any comments in response to the notice published in the **Federal Register** on September 3, 1999 (64 FR 48453) requesting public comment on the extension, without revision, of these information collections.

Request for Comment

Comments are invited on:

a. Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collections 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.

Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Dated: November 19, 1999.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division.

Dated: December 14, 1999.

John E. Werner,

Director, Information & Management, Services, Office of Thrift Supervision.

Board of Governors of the Federal Reserve System, December 16, 1999.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 15th day of December, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–33045 Filed 12–20–99; 8:45 am]

BILLING CODE 4810–33–P; 6720–01–P; 6210–01–P; 6714–01–P

federal register

Tuesday
December 21, 1999

Part II

Department of Education

34 CFR Part 694

Gaining Early Awareness and Readiness for Undergraduate Programs; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 694

RIN 1840–AC82

Gaining Early Awareness and Readiness for Undergraduate Programs

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Proposed regulations.

SUMMARY: The Secretary proposes to amend the regulations governing the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) program. These amendments are needed because the current regulations applied only to the fiscal year 1999 competition. These proposed regulations will apply to any future GEAR UP competitions and were drafted subject to the negotiated rulemaking process required by section 492 of the Higher Education Act of 1964 (HEA), as amended.

DATES: We must receive your comments on or before January 20, 2000.

ADDRESSES: Address all comments about these proposed regulations to Edward Fuentes, U.S. Department of Education, 1990 K Street, NW., room 6107, Washington, DC 20006. If you prefer to send your comments through the Internet, use the following address: comments@ed.gov. You must include the term GEAR UP in the subject line of your electronic message.

If you want to comment on the information collection requirements you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Lisa Aserkoff, 400 Maryland Ave., SW., Room 6E205, Washington, DC 20202. Telephone: (202) 401–6296. 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 listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have the maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations. We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 6107, 1990 K Street, NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9585. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

Background

Section 403 of the Higher Education Amendments of 1998 (Amendments), (Public Law 105–244), enacted October 7, 1998, amending the Higher Education Act of 1965 (HEA) established the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP), a program designed to give more low-income students the skills, encouragement, and preparation needed to pursue postsecondary education, and to strengthen academic programs and student services at participating schools.

On March 2, 1999, we published final regulations implementing GEAR UP for fiscal year 1999 (64 FR 10183), using the Department's authority under section 437(d) of the General Education Provisions Act to waive rulemaking requirements for regulations governing the first grant competition under a new or substantially revised program authority (20 U.S.C. 1232(d)(1)).

Negotiated Rulemaking

Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the Act, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. For fiscal year 1999, we determined that, to make grants under this competition before the funds expired, the use of negotiated rulemaking would be impracticable and contrary to the public interest under section 492(b)(2) of the HEA.

The proposed regulations contained in this NPRM were developed through the use of negotiated rulemaking. The proposed regulations reflect the final consensus of the GEAR UP negotiating committee (committee), which was made up of the following members:

California State University System
The College Board
Council of the Great City Schools
Ford Foundation
High School Equivalency Program and the College Assistance Migrant Program Association and the National Association for Migrant Education, Inc. (a coalition)
Hispanic Association of Colleges and Universities
''I Have a Dream'' Foundation
National Alliance of Black School Educators
National Association for College Admission Counseling
National Association for Equal Opportunity in Higher Education
National Association of Independent Colleges and Universities
National Association of Secondary School Principals and the National Forum on Middle-Grades Reform (a coalition)
National Association of State Student Grant and Aid Programs
National Coalition of Title I/Chapter I Parents
National Collaboration for Youth
National Council of Higher Education Loan Programs
National Education Association
United States Chamber of Commerce
United States Department of Education
United States Student Association

As stated in the committee protocols, consensus means that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Consensus was reached on all of the proposed regulations in this document.

Background

GEAR UP provides two types of competitive grants: State grants and Partnership grants. State grants must provide early college preparation and awareness activities through the early intervention component of the GEAR UP program and scholarships for participating students through the scholarship component of GEAR UP. Partnerships must provide early college preparation and awareness activities through the early intervention component and are encouraged to provide college scholarships, although they are not required to do so.

Section 694.1 Maximum Grant Amounts

Current Regulations: The current regulations set a maximum amount that the Secretary could award each year to a Partnership or a State under GEAR UP. For Partnership grants, the maximum amount that the Secretary could award each year was calculated by multiplying the number of students the Partnership proposes to serve that year, as stated in the Partnership's plan, by $800.

For State grants, the current regulations set the maximum dollar amount that the Secretary could award each year at $5 million.

Proposed regulations: For Partnership grants, the proposed regulations would keep the same maximum amount that the Secretary could award each year as under current regulations, an amount calculated by multiplying the number of students the Partnership proposes to serve that year by $800.

Reasons: Negotiators agreed that this is an appropriate maximum average per student, per year, Federal dollar amount to spend under GEAR UP. We believe that this maximum average Federal dollar amount per student will ensure that the Department can fund a substantial number of projects nationwide each year, while still providing for a broad range of services for those students served.

Proposed regulations: For State grants the proposed regulations would state that the Secretary establishes the maximum amount that may be awarded each fiscal year for a GEAR UP State grant in a notice published in the **Federal Register**. The negotiators recognized that a maximum grant amount was necessary to ensure that we could fund a substantial number of projects each year, while still providing the services necessary to ensure a successful program.

Several negotiators, however, expressed some concern that the maximum amount for the grant was set in regulation. These negotiators mentioned changes in funding from Congress for the program as a potential reason why there needed to be discretion each year in setting the maximum State grant amount. We therefore changed the regulations so that the maximum amount that the Secretary could award each year for a GEAR UP State grant would be announced each fiscal year in a notice published in the **Federal Register**.

Section 694.2 Students Served By the Cohort Approach Under the Early Intervention Component

Statute: Section 404B(g) of the HEA requires that Partnerships provide services to at least one grade level of students, beginning not later than the 7th grade. In addition, Partnerships must ensure that those services are provided through the 12th grade to students in the participating grade levels.

Current Regulations: The current regulations restate the statutory language, but also add language that would require States that choose to use the cohort approach to follow the same rules as Partnerships. The regulations also established the word ''cohort'' as the term used throughout the regulations to refer to the entire grade levels of students the Partnership (or State) served.

Proposed Regulations: The proposed regulations would be the same as the current regulations, with one addition. Partnerships, and States using the cohort approach, must ensure that supplemental appropriate services are targeted to the students with the greatest needs.

Reasons: The committee discussed the problems associated with serving an entire grade level of students in large schools. Several negotiators felt that it was important to try to ensure that the students who needed the services the most didn't get lost among the many other students also served in their school under GEAR UP. The committee discussed how to provide those students with appropriate services, without violating the statute, which requires that services be provided to entire grade levels of students.

The negotiating committee discussed several variations of language initially offered by several negotiators. The language originally offered would have required Partnerships to ensure that direct services be delivered to the most disadvantaged students within a cohort. Several other negotiators, including the Department, while recognizing the concerns the language was trying to address, believed that this language was not the best way to address those concerns. The committee discussed the use of the word ''disadvantaged,'' and wanted to be sure that services weren't only targeted at economically disadvantaged students.

In addition, negotiators were concerned about the word ''delivery,'' and whether it meant that the Partnership had to ensure the student actually received all of the services. Several negotiators wondered how the Partnership could ensure that each disadvantaged student actually receives all of the services if a student adamantly refuses, or doesn't show up, and what the consequences would be for a Partnership if services were not delivered. By contrast, under the proposed regulations, Partnerships would be able to provide services to the entire cohort, tailor services to students' needs, and target additional services appropriate to students with the greatest needs.

In addition, several negotiators were concerned that the requirement as a whole could be read to imply that not all students in the cohort needed to receive services. Several negotiators emphasized that one of the most important attributes of the GEAR UP program was the whole-grade approach, and the negotiators wanted to be sure that the suggested additional language wouldn't lead to Partnerships providing services to only some students in a grade.

The committee then discussed several wording alternatives to address these concerns. One negotiator suggested changing ''disadvantaged'' to ''special needs.'' Some other negotiators, however, were concerned that the term ''special needs'' might imply only learning or physical disabilities. In addition, some negotiators suggested removing ''delivery,'' and instead saying that Partnerships must ensure that services were ''targeted to'' certain students. To address the concern about the whole-grade approach, the words ''supplemental appropriate services'' were added, so that it was clear that while all students should receive appropriate services, students with the greatest needs should get appropriate supplemental services.

The committee then reached final consensus on a provision that requires Partnerships, or States using the cohort approach, to ensure that supplemental appropriate services are targeted to the students with the greatest needs. The committee believed that this language addresses the concern that, in large cohorts, the neediest students might ''get lost,'' and might need some extra attention, but still makes clear that the

attention must be in addition to services provided to the entire cohort. The committee also believed that referring to ''students with the greatest needs'' would be flexible enough to allow individual school districts to decide how to determine which students most needed the additional services.

Section 694.3 Cohort Requirements

Statute: Section 404B(g) of the statute requires that Partnerships must provide services to at least one grade level of students, beginning not later than the 7th grade, in a participating school that has a 7th grade and in which at least 50 percent of the students are eligible for free or reduced-price lunch under the National School Lunch Act (or, if a Partnership determines that it would promote the effectiveness of a program, an entire grade level of students, beginning not later than the 7th grade, who reside in public housing as defined in section 3(b)(1) of the United States Housing Act of 1937).

Current Regulations: The current regulations restate the statute, but divide the requirements into individual paragraphs, to make statutory language clearer.

Proposed Regulations: The proposed regulations would keep the same language as in current regulations.

Reason: The negotiators agreed that the regulatory language would help clarify the statutory requirements. The committee discussed whether there was any way to provide services to students before they reached schools that include a 7th grade. Some negotiators mentioned that in some States there were many elementary schools that didn't include a 7th grade, but that they felt could still benefit tremendously from a program like GEAR UP. The committee discussed this at length, but under the statute Partnerships cannot serve students in schools that do not include a 7th grade. Additionally, several negotiators thought that although others could certainly benefit from GEAR UP services, the emphasis of GEAR UP was intended for students in middle grades (i.e. schools that include a 7th grade), and wanted to ensure that GEAR UP funds reached the population for which they were intended. Students benefit most in the middle grades; research shows that course and other decisions in the middle grades are critical in determining a student's chances of going to college. The definition of schools with a 7th grade already includes a broad range of school configurations without diluting the program's unique focus on the middle grades.

Section 694.4 Changes in the Cohort

Current regulations: Under current regulations, a Partnership or State that chooses to use a cohort approach must serve, as part of the cohort, any additional students who may have enrolled in the participating school, at the grade level of the students in the cohort, after the cohort began receiving GEAR UP services. The current regulations also provide that if, after completing the last grade level offered by the school at which the cohort began to receive GEAR UP services, not all the students in the cohort move on to the same school, the Partnership or the State may, but is not required to, provide services to all of those students. However, the Partnership or State must continue to provide GEAR UP services to at least those students in the cohort who attend subsequent participating schools that enroll a substantial majority of the students in the cohort.

Proposed Regulations: The proposed regulations would keep the same language as in the current regulations to address the students a Partnership or State must serve when there are changes in the cohort.

Reasons: The committee agreed that any new student who enrolls in a participating school and joins a GEAR UP cohort before the cohort completes the GEAR UP program in that school, should have the opportunity to benefit from the direct services the other cohort students are receiving. The committee also agreed that some students who began in the cohort are likely to leave the participating school as well, and that GEAR UP programs should not be required to serve those students.

The committee also recognized that as the cohort moves on to a subsequent participating school (for example, a high school), a single middle-grades school could feed into more than one high school. Some cohorts may, therefore, eventually be distributed among several schools. The committee agreed that Partnerships or States should be required to continue providing GEAR UP services to at least those students in the cohort that attend participating schools that enroll a substantial majority of the students in the cohort. In doing so, the maximum number of students from the original cohort would continue to receive services, without placing an undue burden on Partnerships or States.

Sections 694.5 and 694.6 Serving Private School Students

Current Regulations: The current regulations outline the requirements a Partnership or State must meet if it chooses to provide services to private school students under the program's early intervention component. The regulations are based on private school student participation requirements generally applicable to most elementary and secondary education programs carried out by the Department.

Proposed Regulations: The proposed regulations would keep the language from current regulations for providing services to private school students under the program's early intervention component.

Reasons: The committee agreed that regulations are necessary to ensure that Federal funds are used for educational services that are secular, neutral, and nonideological.

Section 694.7 Matching Requirements

Statute: Under section 404C(b) of the HEA, the Secretary may not approve a GEAR UP plan unless the plan provides that the Partnership or State will provide, from State, local, institutional, or private funds, not less than 50 percent of the cost of the program, in cash or in kind. Section 404C(b) also gives the Secretary the authority to modify, by regulation, the 50 percent requirement for Partnerships.

Current Regulations: The current regulations require a Partnership to state in its application the percentage of the cost of the GEAR UP project for each year that the Partnership will provide from non-Federal funds, and then to comply with the matching percentage stated in the application for each year of the project period. Under current regulations, a Partnership must also provide at least 20% of the cost of the project from non-Federal funds for any year in the project period, and the non-Federal share of the cost of the GEAR UP project must be at least 50% of the total cost over the project period.

Proposed regulations: The proposed regulations would keep the requirement that the non-Federal share of the cost of the GEAR UP project be not less than 50 percent of the total cost over the project period. However, the proposed regulations would permit a match lower than 50 percent, but not lower than 30 percent, for Partnerships with three or fewer institutions of higher education as members, and in which the fiscal agent is (1) eligible to receive funds under Title V, Part B of Title III, or section 316 or 317 of the HEA, or (2) a local educational agency. In addition, to qualify for the lower match, the Partnership would have to include only participating schools with a 7th grade in which at least 75 percent of the students are eligible for free or reduced-price lunch under the National School Lunch Act; and only local educational agencies

in which at least 50 percent of the students enrolled are eligible for free or reduced-price lunch under the National School Lunch Act.

Reasons: The committee agreed that generally the 50 percent matching requirement over the entire project period gives Partnerships broad flexibility in terms of the amount of the project cost that the Partnership must provide for each year of the project. The success of any project depends in part upon strong community support. The 50 percent requirement helps to ensure that the GEAR UP project has strong community support, that all members of the Partnership contribute to the program, in cash or in kind, and that the Partnership can be sustained, even after Federal funds are no longer available, through strong community Partnerships, with support from all partners. The Department also suggested that the poorest and very rural communities were able to meet the match in the fiscal year 1999 competition.

Several negotiators, however, felt that the 50 percent match precluded some of the poorest communities from applying, because they wouldn't have the resources to meet the 50 percent match. The committee discussed a variety of options to address this problem.

One negotiator suggested a waiver of the match. If that wouldn't be possible, the negotiator suggested a minimum match of 20 percent throughout the life of the grant. The negotiator was concerned that many colleges and universities, especially those that serve low-income students, were already burdened by matching requirements of other programs, even where there is flexibility to substitute in-kind services for dollars. Several other negotiators, including the Department, felt that a minimum match of 20 percent throughout the life of the grant was too low, and that other members of the Partnership could and needed to provide more. These negotiators stressed that Partnerships would not need to use cash to meet the match, but could do so through in-kind contributions, which, in spite of the negotiator's concerns, should serve to alleviate the burden.

Another option presented by some negotiators was that Partnerships could be eligible for a 25 percent match if they served only elementary and secondary schools in which at least 50 percent of the students enrolled were eligible for free or reduced-price lunch under the National School Lunch Act, and if they served only LEAs in which at least 50 percent of the students enrolled were eligible for free or reduced-price lunch under the National School Lunch Act.

A third option presented to the committee would have permitted the Secretary to give special consideration to Partnerships with respect to the match either before the Partnership's application was approved or after a grant was awarded. For pre-approval special consideration, a Partnership would apply for special consideration for a match less than 50 percent, and would receive notification from the Secretary as to whether their request was granted within 30 days of the application deadline. Whether the request was pre-approval, or post-award, there would be two circumstances under which a Partnership could apply for special consideration. The first circumstance would be if an emergency, such as a natural disaster, occurred where the Partnership was located that would warrant a lower match.

The other circumstance that could allow a Partnership to apply for a lower match would be if there were within the Partnership systemic issues that could preclude the Partnership from being able to meet the match. To qualify for the lower match, the Partnership would have to show that, in spite of its limited resources, it had an ongoing commitment to serving the educational needs of targeted students. The Partnership would also have to show that it had no access to adequate fiscal resources, or that it was geographically isolated. Finally, this would be available only in geographic areas in which at least 75 percent of the students were eligible for free or reduced-price lunch, or in which there was a high unemployment rate.

The negotiators felt that the provision that appears in the proposed regulations was the best option available. Several negotiators didn't want the first option of either a waiver or a minimum 20 percent match throughout the life of the grant. These negotiators felt that a waiver would be too logistically burdensome, both for the Secretary and for the applicant. These negotiators also felt that a minimum of 20 percent over the life of the grant was too low.

Negotiators also didn't agree to the second option, because they felt it could allow too many applicants to take advantage of a reduced match, which would weaken the projects and mean more Federal money would be spent per project, and fewer projects could be funded.

Negotiators felt that the third option was not the best option for a couple of reasons. One reason is that this option would have required both the applicants and the Department to spend significant amounts of time determining whether the applicants were in fact eligible for the lower match, since the criteria to qualify for the lower match were subjective and extremely detailed. In addition, this option would have required the Secretary to make individual determinations as to whether an applicant qualified for the lower match.

Negotiators, including the Department, preferred an approach that provided a lower match for an easily definable group of applicants. Negotiators felt that this approach would be less burdensome, both for applicants and for the Department, and would still provide a lower match for the applicants that needed it most.

One negotiator argued that the group of institutions of higher education eligible for the lower match in the proposed regulations should be expanded to include institutions eligible to receive funds under all of Part A of title III of the HEA, instead of just sections 316 and 317. Other negotiators, including the Department, felt that the proposed regulations were sufficiently broad to allow a significant number of Partnerships to be eligible for the reduced match and further believed that including the institutions the negotiator suggested would expand the exception so broadly that it would become the rule.

Section 694.8 Fiscal Agents for Partnerships

Statute: Section 404B(d) of the statute requires that a Partnership designate an Institution of Higher Education (IHE) or a Local Educational Agency (LEA) as the fiscal agent for the partnership.

Current Regulations: The current regulations restate the statutory language and add that the IHE must be an IHE that is not pervasively sectarian.

Proposed Regulations: The proposed regulations would keep the language from the current regulations, but would add language clarifying that although the IHE or LEA must be the fiscal agent, any member of the Partnership can organize the project.

Reasons: Several negotiators wanted to clarify in the regulations that other members of the Partnership, such as community-based organizations, though not eligible to be the fiscal agent, could still be a driving force in a Partnership. Some negotiators felt that without the clarifying language, organizations other than IHEs and LEAs might think they couldn't play a significant organizational role in the Partnership and might be less inclined to join the Partnership.

Section 694.9 Maximum Indirect Cost Rates for States and LEAs

Current Regulations: Although the current regulations don't address indirect cost rates, we addressed indirect cost rates in the application package for GEAR UP. We determined that GEAR UP projects were educational training grants under 34 CFR 74.562. Consistent with that provision in EDGAR, a recipient was limited to the maximum of eight percent or the rate permitted by an applicant's negotiated cost rate agreement, whichever was less. This rate did not apply to costs incurred by State agencies or LEAs.

Proposed Regulations: Under the proposed regulations, the same rule that applies to applicants other than State agencies or LEAs under 34 CFR 74.562 would also apply to State agencies and LEAs, so that all grant recipients' maximum indirect cost rates would be limited to the lesser of the rate established by the negotiated indirect cost agreement, or eight percent of a modified total direct cost base.

Reasons: While both negotiators and the Department recognize that indirect costs are both real and legitimate, they also believe that having large amounts of funds compensate partners for their general overhead and related expenses is inconsistent with the purpose of the program. The negotiating committee agreed that the eight percent maximum on indirect cost reimbursement is a fair percentage that still allows significant funds to be available for direct grant services.

Section 694.10 Requirements for Awards Under the Scholarship Component

Section 694.10(a) Amount of Scholarship

Statute: Section 404E of the HEA requires States that participate in GEAR UP to establish or maintain a financial assistance program that awards scholarships to students. The minimum scholarship amount for each fiscal year must not be less than the lesser of 75 percent of the average cost of attendance for an in-State student, in a 4-year program of instruction, at public IHEs in the State, or the maximum Federal Pell Grant funded under section 401 of the HEA for the fiscal year.

Section 404E also requires that GEAR UP scholarships under this section may not be considered for the purpose of awarding Federal grant assistance under title IV of the HEA, except that the total amount of student financial assistance awarded may not exceed a student's total cost of attendance.

Current Regulations: The current regulations include the requirements outlining the minimum scholarship amount, and add that cost of attendance is to be determined under section 472 of the HEA.

The current regulations also require a State, or Partnership that chooses to participate in the scholarship component under section 404E, to ensure that it will not award a GEAR UP scholarship to a student in an amount that, in combination with other student financial assistance under title IV of the HEA, exceeds cost of attendance, again as defined by section 472 of the HEA.

The current regulations further require that a State or Partnership must reduce the scholarship amount proportionally for any student who receives a GEAR UP scholarship and attends an institution on a less than full-time basis during any academic year.

Proposed regulations: The proposed regulations would remain the same as the current regulations with respect to the minimum scholarship amount required. The proposed regulations would describe the statutory requirements, and would keep section 472 of the HEA as the means of determining cost of attendance for establishing the minimum award amount.

The proposed regulations would no longer require a reduction in the scholarship amount for students attending institutions on a less than full-time basis during an academic year. Instead, the proposed regulations would allow a State or Partnership to reduce the scholarship amount to students attending less than full-time, but in no case could the percentage reduction in the scholarship be greater than the percentage reduction in tuition and fees charged to that student.

Reasons: The negotiators believed that the language in the current regulations regarding the reduction of a scholarship award for students who attend an institution on a less than full-time basis needed to be changed. The negotiators didn't think that the regulations should require that the reduction in scholarship be proportional. Several negotiators pointed out that, at some institutions, a student could attend less than full-time but still be required to pay full-time tuition and fees. In addition, a student may attend less than full-time but may still have to be on campus each day of the week, so transportation costs could be the same regardless of whether a student is attending full- or part-time.

The negotiators therefore decided that a student's scholarship shouldn't necessarily be reduced proportionately when a student attends an institution on a less than full-time basis. The negotiators thought it would be better for the student if the State or Partnership had the discretion as to whether to reduce the scholarship and if so by how much. However, in no case could the percentage reduction in the scholarship be greater than the percentage reduction in tuition and fees charged to the student. For example, if a student attends an institution less than full-time, and the student's tuition and fees are reduced by 25%, then the State or Partnership could, if it chose, reduce the GEAR UP scholarship by no more than 25%. The negotiators felt this was the best way to ensure that students who decided to attend less than full-time could still cover at least the same amount of their tuition and fees with the their GEAR UP scholarships.

Section 694.10(b) Scholarships and Pell Grant Recipients

Statute: Section 404E requires the Secretary to ensure that States place a priority on awarding scholarships to students who will receive a Federal Pell Grant for the academic year for which the GEAR UP scholarship is awarded.

Current Regulations: Under the current regulations, a State, or a Partnership that chooses to participate in the scholarship component under section 404E of the HEA, must award GEAR UP scholarships to students who are eligible for a GEAR UP scholarship, and who will receive a Federal Pell Grant for the academic year for which the GEAR UP scholarship is being awarded. If the State or Partnership still has funds remaining after awarding scholarships to those students, it may award scholarships to other eligible students (who will not receive a Federal Pell Grant) after considering the need of those students for GEAR UP scholarships.

Proposed Regulations: The proposed regulations would make two substantive changes to the current regulations. First, the proposed regulations would add students ''who are eligible to receive'' a Federal Pell Grant, rather than just ''who will receive'' a Federal Pell Grant. Second, the proposed regulations would change ''academic year'' to ''award year.'' With the exception of these two changes, the proposed regulations are substantively the same as the current regulations.

Reasons: Under the proposed regulations, a State or Partnership would have to award GEAR UP scholarships first to students who will receive, *or are eligible to receive,* a Federal Pell Grant during the award year in which the GEAR UP scholarship is being awarded. Negotiators felt that

eligibility was crucial because in many cases it would be very difficult to tell whether a student would actually receive a Federal Pell Grant at the time the GEAR UP scholarship award would be made. The negotiators felt therefore that it was important to include that a student could be eligible to receive a Pell Grant in order to be eligible for the statutory Pell Grant priority. Negotiators felt that eligibility for a Pell Grant still showed that the student was exceptionally needy and therefore deserving of a priority for a GEAR UP scholarship.

In addition, the negotiators changed ''academic year'' to ''award year.'' Several negotiators felt that using award year would be more appropriate, because student financial aid is generally provided based on an award year, and not an academic year.

The committee also agreed that we would not read the language as it appears in the proposed regulations (i.e. ''first'' and ''during the award year'') to penalize a State or Partnership that awarded all of its scholarships at the appropriate time and subsequently additional students became eligible for Pell Grants. Although a State or Partnership must first award scholarships to students they know to be eligible for a Pell Grant, they are not required to award scholarships later for students whom they couldn't have known would be eligible for a Pell Grant at the time the scholarships were awarded.

Section 694.10(c) Continuation Scholarships

Current Regulations: Under the current regulations, a State or a Partnership must award continuation scholarships in successive award years to each student who received an initial scholarship and who continues to be eligible for a scholarship.

Proposed Regulations: The proposed regulations would remain substantively the same as the current regulations.

Reasons: Negotiators felt that it was important to assure students that once they received a scholarship, it would remain available to them for as long as they remained eligible. Because GEAR UP is a program for low-income students, negotiators wanted to be sure that students wouldn't suddenly need to find alternate ways to fund their education after they'd been awarded a scholarship. Negotiators felt it was important not to deter these students from going to college because there was no guarantee that there would be money available for them after they had completed a year or more of college. With these regulations, GEAR UP students who receive a GEAR UP scholarship can be assured that for as long as they remain eligible, they will receive GEAR UP scholarship money.

Additionally, negotiators discussed whether grantees would still be required to provide continuation scholarships if Federal funding was discontinued during the life of the grant. We clarified for the negotiators that if Federal funding were discontinued during the life of the grant, we wouldn't require grantees to continue to come up with their share of the funds. If Federal funding is provided throughout the life of the grant, however, a grantee would be obligated to provide continuation scholarships to students who remain eligible for scholarships even after the grant period has ended.

Section 694.11 Disclosure Requirements Regarding an Institution's Treatment of a GEAR UP Scholarship in Relation to Other Student Financial Assistance

Statute: Under section 404E of the HEA, scholarships provided under section 404E may not be considered for the purpose of awarding Federal grant assistance under title IV, except that in no case may the total amount of financial assistance awarded to a student under title IV exceed that student's total cost of attendance.

In addition, section 404C of the HEA requires that the plan that a State or Partnership submits to be eligible for a GEAR UP grant must contain provisions designed to ensure that funds provided under GEAR UP will supplement and not supplant funds expended for existing programs.

Current regulations: The current regulations essentially reiterate the statutory provision that a GEAR UP scholarship must not be considered in the determination of a student's eligibility for other grant assistance provided under title IV of the HEA. In addition, the current regulations established the order in which postsecondary student financial assistance must be awarded for each recipient of a GEAR UP scholarship.

Proposed regulations: The proposed regulations would modify the current regulations. Under the proposed regulations, an institution may have to disclose its policy for the treatment of a GEAR UP scholarship in relation to other student financial assistance. An institution would not be required to disclose its policy for the treatment of a GEAR UP scholarship in relation to other financial assistance if the institution's policy meets certain criteria. The first criterion would be that the GEAR UP scholarship must not be considered in the determination of a student's eligibility for other grant assistance provided under title IV of the HEA, as required by section 404E of the statute. The second criterion is that an institution must also have a policy under which the GEAR UP scholarship does not supplant other public or institutional gift aid that the student would otherwise have been eligible to receive.

The final criterion for non-disclosure is that an institution must follow certain procedures when a student receives an overaward of student financial aid. A GEAR UP scholarship, in combination with other student financial assistance awarded under any title IV HEA program and any other grant or scholarship assistance, may not exceed the student's cost of attendance. If that combination does exceed the student's cost of attendance, the institution must, before reducing public or institutional gift aid, reduce other assistance to zero, by the amount in excess of cost of attendance, in a prescribed order. The institution must first reduce loans, then need-based employment, and then the GEAR UP scholarship before reducing public or institutional gift aid, except that the institution may reduce need-based employment first and loans second at the election of the student. This would mean that both the student and the institution would have to agree to reduce the need-based employment first and loans second.

The proposed regulations would therefore require an institution to reduce each category of assistance (i.e. loans, need-based employment, the GEAR UP scholarships) to zero, by the amount in excess of cost of attendance, before reducing the next category. For example, if a student's award package exceeds cost of attendance by $500 and the student has $400 in loans, the institution would have to reduce the loans to zero and then reduce the need-based employment by $100 to ensure that the package wouldn't exceed cost of attendance.

The proposed regulations would allow an institution to reduce its institutional aid before reducing a GEAR UP scholarship only if it determines in writing that there are exceptional circumstances related to the GEAR UP student's institutional aid that are unique to that GEAR UP student. For example, an exceptional circumstance could occur if it's clear that allowing the institution to spend the GEAR UP money and reduce the student's institutional award would benefit the GEAR UP student. What would be key to the determination of whether something is an exceptional

circumstance is the institution's alternative use of funds that would otherwise be made available to the GEAR UP student in a financial aid package. An exceptional circumstance could exist if the institution commits the institutional aid to make a grant for the future benefit of that student, such as graduate school or if the institution spends the money on a special curriculum or extra support for that student.

If exceptional circumstances do exist and an institution does reduce the GEAR UP student's institutional aid before the GEAR UP scholarship, the institution must document and maintain in the GEAR UP student's file the modification that was made to the GEAR UP student's gift aid award package and the reason for the modification. Finally, the institution would be required to provide written notification to the GEAR UP student of the reason for and the specific modification made to the gift aid package.

Under the proposed regulations, an institution would be required to disclose its policy for the treatment of a GEAR UP scholarship in relation to other student financial assistance if it doesn't follow the procedures already discussed. The proposed regulations would require the institution, if it chooses a policy other than that outlined in § 694.11(a), to establish a policy for the treatment of GEAR UP scholarships and inform all prospective students of that policy. Under the proposed regulations, there would be a cross-reference to the definition of ''prospective student'' in § 668.41, which provides that prospective students are individuals who have contacted an eligible institution requesting information concerning admission to that institution. This could include students who have written a letter, called, or notified by email an institution that they'd like information about admission to the institution.

In addition, the institution would be required to notify the Department by September 1, 2000 that its treatment of GEAR UP scholarships with respect to institutional gift aid is different from the procedures that would not require disclosure. The institution also must notify the Department in a timely manner if, after September 1, 2000, it elects to treat GEAR UP scholarships differently from the procedures that would not require disclosure.

Finally, the proposed regulations would make clear that regardless of the disclosure requirements, all institutions must follow the procedures outlined in § 694.11 (a) with respect to title IV aid, regardless of whether the institution was required to disclose its policy.

Reasons: The Department's initial proposal would have required institutions to treat GEAR UP scholarships, with respect to other student financial assistance, in the same way as the procedures that do not require disclosure in the proposed regulations as they appear in this NPRM and also to apply this requirement to other private scholarship funds. However, one negotiator objected that those procedures meant that the Federal government would be putting conditions on how institutions and private charities package or award their own scholarship aid. The negotiator was concerned that this could set a negative precedent for future programs and regulations and ultimately penalize schools that do the most for needy students, such as those that practice need-blind admissions. The negotiator also argued that the ''supplement not supplant'' language in the GEAR UP legislation applies to programmatic funds, not to individual student aid packages funded through private dollars at colleges not part of a GEAR UP partnership. The negotiator also argued that the Department's interpretation gave special treatment to GEAR UP students over other needy students, including many in existing early intervention programs. Finally, it was pointed out that some private scholarship money is ''last-dollar.'' To attempt to make the GEAR UP program last-dollar might have the perverse effect of decreasing a GEAR UP student's overall aid package by removing a student's eligibility for these funds.

Other negotiators, including the Department, agreed that private charitable scholarships, other than institutional aid, should be excluded from the regulation. With regard to institutional aid, however, these negotiators pointed out that it was not unprecedented for the Federal government to place conditions on such aid to protect the Federal fiscal interest. Several negotiators noted that the Federal Government had a long history of placing maintenance-of-effort, supplement-not-supplant, and similar restrictions on institutional aid as a condition of receiving Federal funds. These negotiators also felt that the Federal Government should ensure that not only its funds, but also the matching funds provided in good faith by other GEAR UP donors, such as school districts, service clubs, businesses, and SEAs and State higher education agencies, are used properly by institutions for the intended purpose of aiding GEAR UP students, not to supplant institutional scholarship aid.

These negotiators also rejected the suggestion that putting conditions on institutional scholarship aid penalizes any institutions. All institutions would be treated the same, wherever Federal GEAR UP funds were used. They argued that it cannot be considered an institutional penalty when students come to an institution with GEAR UP scholarships to help pay for college, in addition to the other scholarships for which they would otherwise qualify. The fact that some institutions would consider the conditions a denial of an opportunity to exchange GEAR UP aid for other aid, which could be used for other purposes, is not an institutional penalty but a prudent measure to prevent misuse of Federal program funds.

These negotiators rejected the suggestion that supplement-not-supplant should not apply to individual student aid packages. They agreed with the point that applying this provision to individual student aid packages gives special treatment to GEAR UP students (and TRIO and NEISP students who receive a GEAR UP scholarship) above others, but noted that this is the whole point of the GEAR UP program. They pointed out that GEAR UP scholarships are not a general need-based aid program, or an institutional aid program, but a scholarship program to motivate individual GEAR UP students and help them pay for college. The committee agreed, in response to a negotiator's concern, that excess GEAR UP scholarships would go to other GEAR UP students and not to the Federal Treasury.

In an effort to reach consensus, all the negotiators agreed to fulfill the intent of GEAR UP scholarships through public disclosure and public information. By doing so, the institution would be able to treat GEAR UP scholarships as they relate to certain other non-Title IV student financial assistance as it sees fit. An institution would, however, have to disclose, to both prospective students and the Department, that it has chosen not to follow the procedures in the proposed regulations and would have to disclose to prospective students its policy for GEAR UP scholarships. GEAR UP scholarship students would then know how institutions plan to treat GEAR UP scholarships so that they can make informed decisions about which institution they want to apply to and attend based on the amount and type of financial assistance they are likely to receive.

In addition to the reasons already mentioned, the negotiators felt that

disclosure requirements were the best option for several other purposes. A list of the institutions that report their policies to the Department will be made available to all GEAR UP Partnership and State grant programs so that they can advise students that a GEAR UP scholarship may not result in any additional benefits if used at any of the institutions on the list. Also, the Department may use the list to distinguish among institutions in future GEAR UP program evaluations, because GEAR UP scholarships should not be expected to make a program performance difference at institutions where they are packaged not to make such a difference. Finally, any institution that wants to comply with the non-supplantation procedures, but can't due to exceptional circumstances, related to a particular student, could document the circumstances, rather than inform the Department that it isn't adopting the policy in the proposed regulations. For example, if a GEAR UP student were eligible for a non-GEAR UP scholarship and any portion of the scholarship that wasn't needed for undergraduate education could be saved for graduate education, the institution could benefit the student by reducing this other scholarship before reducing the GEAR UP scholarship.

Section 694.12 Financial Assistance for Partnerships That Don't Participate in the Scholarship Component Under Section 404E of the HEA

Current regulations: The current regulations provide that a GEAR UP Partnership that does not participate in the GEAR UP scholarship component may provide financial assistance for postsecondary education to students who participate in the early intervention component only if the financial aid is directly related to, and in support of, other activities of the Partnership under the early intervention component of GEAR UP.

Proposed Regulations: The proposed regulations would keep the language from the current regulations, with minor additions. One addition is that the proposed regulations would add language to clarify that the requirements in this section apply to Partnerships only if they use either GEAR UP funds, or non-Federal funds used to comply with the matching requirement, to provide the financial assistance for postsecondary education. In addition, the proposed regulations would add the requirement that the Partnership comply with the provisions in §§ 694.10(c) and 694.11, governing the treatment of student financial assistance under GEAR UP.

Reasons: Several negotiators asked for this clarifying language. Negotiators felt the regulation could be read to imply that any financial assistance provided by the Partnership would have to be directly related to, and in support of, other activities of the Partnership under the early intervention component. Negotiators wanted it to be clearer that Partnerships could also provide financial assistance using non-Federal funds that the Partnership was not using to comply with the matching requirement to students that participated in GEAR UP, and that this financial assistance would not be subject to the requirements of this section. We therefore agreed to add language that would make the clarification.

In addition, negotiators, including the Department, realized that financial assistance provided under this section should be subject to similar requirements as the financial assistance provided by the scholarship component in section 404E of the HEA.

Several negotiators wanted clarification that in addition to these requirements, there are other, more general principles that apply to Partnerships that want to offer financial assistance. For example, there are principles of obligation law that dictate when and how financial assistance can be awarded if it is going to be counted toward the match in a particular fiscal year. The committee agreed that it is not necessary or desirable to have this kind of information in regulations, but that there would need to be non-regulatory guidance from the Department on other restrictions that might apply.

Section 694.13 Determination of the State Applicant

Current regulations: The current regulations provide that the Governor of a State must designate which State agency applies for, and administers, a State grant under GEAR UP.

Proposed regulations: The proposed language would keep the language in the current regulations.

Reasons: Several negotiators mentioned that they would prefer a more collaborative approach to the designation of which State agency will apply for and administer a GEAR UP State grant. The negotiating committee therefore discussed whether others, such as the State Educational Agency (SEA), or the Chief State School Officer, should be involved in the decision. Although the negotiating committee agreed that collaboration was important, many on the committee felt that there was no need to add language to the regulations, because, in most if not all cases, the Governor of a State will collaborate with the SEA, the Chief State School Officer, and other relevant agencies and people. In addition, several negotiators felt that although many should be involved in the decision and implementation of the grant, the final decision needs to rest with the State's chief executive officer, the Governor. The Governor is in the best position to ensure that agencies collaborate in the design and implementation of the GEAR UP project. Finally, some negotiators felt that the Governor was necessary to bridge the gap between the elementary and secondary education community and the higher education community, both of which are involved in GEAR UP.

The proposed regulations remain unchanged, therefore, with the Governor responsible for designating the State agency that applies for and administers the GEAR UP State grant. However, we expect that Governors of States applying for GEAR UP grants will collaborate with appropriate agencies and officials to determine which agency should apply on behalf of the State and how agencies should collaborate in implementing the grant.

Section 694.14 21st Century Certificates

Statute: Section 404F of the HEA requires that the Secretary ensure that 21st century scholarship certificates are provided to all students participating in GEAR UP. In addition, the certificate must be personalized for each student and indicate the amount of Federal financial aid for college a student may be eligible to receive.

Current Regulations: The current regulations provide that a State or Partnership must provide, in accordance with such procedures as the Secretary may specify, a 21st Century Scholar Certificate from the Secretary of Education to each student participating in the early intervention component of its GEAR UP project. In addition, current regulations require each certificate to be personalized and to indicate the amount of Federal financial aid for college that a student may be eligible to receive.

Proposed Regulations: The proposed regulations would keep the language that is in the current regulations.

Reasons: The negotiating committee agreed that the statute requires the Secretary to ensure that the students participating in GEAR UP each receive an individualized certificate, indicating the amount of Federal financial aid for college that a student may be eligible to receive. The regulations make it clear that the State or Partnership must

provide the certificate to each student, but that the certificate will be from the Secretary. Since the certificates must be personalized, the best and most efficient way to award the certificates is to involve the Partnerships and States, since they are the more likely to have the students' personal information, such as the students' names and the date the certificate will be presented.

Section 694.15 NEISP States

Statute: Section 404A(b)(2) of the HEA requires that the Secretary ensure that students served under the chapter 2 of subpart 2 of part A of title IV of the HEA, the National Early Intervention Scholarship and Partnership (NEISP) Program, on the day before the date of enactment of the Higher Education Amendments of 1998 (Amendments) continue to receive assistance through the completion of secondary school.

Current regulations: The current regulations basically restate the requirements in statute for any State that receives a GEAR UP grant that served the students referred to in the statute.

Proposed regulations: The proposed regulations would keep the language in the current regulations.

Reasons: The negotiators agreed that the statute requires the Secretary to ensure that students served under the NEISP program continue to receive assistance through the completion of secondary school. The regulations clarify that the chapter mentioned in the statute is NEISP, and that the date of enactment of the Amendments was October 7, 1998.

Section 694.16 Mandatory Priority

Statute: Section 404A(b)(2) of the HEA requires that the Secretary, in making awards to States, give priority to eligible entities that on the date of enactment of the Amendments, carried out successful opportunity programs under chapter 2 of subpart 2 of part A of title IV, and that have a prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies.

Current regulations: The current regulations essentially restate the statute, with language that the date of enactment was October 7, 1998, and that the chapter referred to is the NEISP program, which GEAR UP replaced.

Proposed regulations: The proposed regulations basically restate the proposed regulations, with only small editorial changes.

Reason: The statutory priority remains in the regulations because the language is clearer than in the statute, and because there are also permissible priorities in the regulations, and so it seemed clearer to people to have all the priorities appear in the same place, rather than having to reference both the regulations and the statute to know what priorities applied.

Section 694.17 Permissible Priorities

Current regulations: The current regulations include two priorities that the Secretary would have the discretion to choose for the fiscal year 1999 competition. Under those regulations, the Secretary could give priority to projects by Partnerships or States that serve a substantial number or percentage of students who reside in an Empowerment Zone, including a Supplemental Empowerment Zone, or Enterprise Community designated by the U.S. Department of Housing and Urban Development or the U.S. Department of Agriculture. In addition, the Secretary could give priority to Partnerships that establish or maintain a financial assistance program that awards scholarships to students either in accordance with section 404E of the HEA, or in accordance with these regulations.

Proposed regulations: The proposed regulations would keep the language in the current regulations, with some minor changes. In the priority for projects in Empowerment Zones or Enterprise Communities, the proposed regulations would allow a priority for projects that serve a substantial number or percentage or students who either reside in, or attend a school in, an Empowerment Zone or Enterprise Community. In addition, the priority for Partnerships that establish or maintain a financial assistance program that awards scholarships would include language that the scholarship program is to strengthen the early intervention component of its GEAR UP project.

Reasons: For the priority about Empowerment Zones and Enterprise Communities, several negotiators felt that Partnerships or States that serve a substantial number of students who attend a school in an Empowerment Zone or Enterprise Community should be eligible for the priority, even if the students don't live in an Empowerment Zone or Enterprise Community. The committee discussed whether it could ever occur that students who weren't truly needy would ever attend schools in Empowerment Zones or Enterprise Communities. The Committee decided that it was not a concern because the other eligibility requirements would still apply.

For the priority for Partnerships that include a scholarship program in their GEAR UP project, several negotiators were concerned that this priority would penalize Partnerships that had very strong early intervention components, but no scholarships. These negotiators felt that the early intervention component was crucial to the success of GEAR UP, and that Partnerships shouldn't be penalized for concentrating their efforts and sometimes very limited resources on early intervention. The committee discussed the importance of scholarships, and the need to ensure that the benefits of the early intervention component resulted in more students going to college. The committee therefore decided to add language to the priority to ensure that the priority wouldn't be read to mean that the scholarship component was more important, or could replace, the early intervention component. The priority is not intended to imply that scholarships are more important than the early intervention component, only that scholarships are an excellent way to supplement an already strong early intervention component.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits of this regulatory action—both quantitative and qualitative—we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We note that, as these proposed regulations were subject to negotiated rulemaking, the costs and benefits of the various requirements were discussed thoroughly by negotiators. The consensus reached on a particular requirement generally reflected agreement on the best possible approach to that requirement in terms of cost and benefit.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comments on whether there may be further opportunities to reduce any potential costs or to increase any potential benefits resulting from these proposed

regulations without impeding the effective and efficient administration of the program.

Summary of Potential Costs and Benefits

Sections 694.1, 694.3–694.6, 694.8, and 694.12–694.17 of the proposed regulations would provide guidance for complying with statutory requirements and ensure the proper and effective expenditure of program funds. These regulations would set and clarify: the maximum amount that may be awarded to a Partnership or State; the requirements for serving a cohort of students; the requirements for serving private school students; the requirements for Partnerships in designating a fiscal agent; the conditions under which Partnerships may provide financial assistance to students; the procedure for designating a State agency; the requirements for providing 21st Century Scholarship Certificates; the requirements for States that served National Early Intervention Scholarship and Partnership students; and the priorities that must and may be established by the Secretary. There would be no costs associated with these regulations.

Section 694.2 of the proposed regulations would clarify those services that a Partnership or State that chooses to use the cohort approach must provide. It would require appropriate, supplemental services to be targeted to students with the greatest needs. The Department has determined that the cost to provide these services would be minimal, and that the benefit would exceed the cost. This regulation would ensure that the neediest students in programs with large cohorts would receive a level of services sufficient to succeed in the program.

Section 694.7 of the proposed regulations would modify the matching requirements for Partnerships. It would allow Partnerships to set their own matching levels in any year, as long as they comply with the matching percentage stated in their application and provide at least 50 percent of the total project cost over the total project period. It would also allow Partnerships that meet certain, specified criteria to provide as low as 30 percent of the total project cost over the total project period. This regulation would provide greater flexibility to Partnerships in meeting matching requirements, giving Partnerships the ability to reduce costs in any given year and the ability to reduce costs over the total project period if they meet the specified criteria.

Section 694.9 of the proposed regulations would set a maximum indirect cost rate of 8 percent for State and local government agencies. The potential cost associated with this regulation would be the amount of indirect costs that a State or local government agency could not charge to program funds. This amount would be the difference between a State or local government agency's negotiated indirect cost agreement, if it would exceed 8 percent, and the 8 percent maximum rate allowed. The Department has determined that the benefit from this regulation would exceed the potential cost. Setting a maximum indirect cost rate would increase the efficiency of program funds by ensuring that the vast majority of funds are used to provide direct services to students. Furthermore, the proposed regulation would support the competitive nature of the program by setting a maximum indirect cost rate that reflects the current indirect cost rates of the States that have been awarded grants.

Section 694.10 of the proposed regulations would provide guidance for complying with statutory requirements for scholarships awarded under this program. It would require States and Partnerships that participate in the scholarship component to award continuation scholarships to those students who receive an initial scholarship, as long as those students remain eligible. The potential cost of this regulation would be the cost of scholarships for those students who continue to remain eligible beyond the time period for which a State or Partnership has budgeted. Given the substantial matching resources of States, which are required to participate in the scholarship component, the Department has determined the potential cost of this requirement to be minimal. More importantly, this regulation would ensure that students receive the continuing financial support that is necessary to complete their postsecondary education.

Section 694.11 of the proposed regulations would clarify the statutory requirements for scholarships as they relate to title IV aid. It would require institutions of higher education to disclose their policy for the treatment of a scholarship under this program, if they choose not to follow the specified procedures for determining financial assistance eligibility and making adjustments in the case of an over-award. The minimal cost of this regulation would be the cost for institutions to disclose their policy or to follow the procedures in the regulation. The Department has determined that the benefit of the proposed regulation would exceed the cost because students would be better informed about the treatment of their scholarship and the calculation of their financial assistance at competing institutions.

2. Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 694.1 *What is the maximum amount that the Secretary may award each fiscal year to a Partnership or a State under this program?*)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Entities that would be affected by these regulations are States and State agencies, local education agencies (LEAs), local community organizations, and institutions of higher education. States and State agencies are not ''small entities'' under the Regulatory Flexibility Act.

Institutions of higher education are defined as ''small entities,'' according to the U.S. Small Business Administration Size Standards, if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are

institutions controlled by governmental entities with populations below 50,000. Small LEAs and local community organizations are small entities for the purposes of the Regulatory Flexibility Act.

The proposed regulations would not have a significant economic impact on small entities because the regulations would not impose excessive regulatory burden or require unnecessary Federal supervision. The regulations would give small entities greater flexibility in meeting matching requirements, provide guidance for complying with statutory provisions, and impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act

Section 694.7 contains an information collection requirement. In addition, there is an application package associated with the regulations that contains information collection. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this section as well as a copy of the application package to the Office of Management and Budget (OMB) for its review.

Collection of Information—Discretionary Grant Programs—Application Package for the Gear UP Discretionary Grant Program

The information collection would apply to two types of grants—Partnership grants and State grants—awarded to help more low-income students stay in school, study hard, and take the right courses to go to college. By June 2000, approximately 74 new Partnership grants averaging $460,000 a year for five years, and 6 new State grants averaging $2.1 million per year for five years will be awarded.

The likely respondents would be State agencies; two- and four-year degree granting institutions of higher education; LEAs; businesses and other for-profit entities; nonprofit institutions; small businesses or organizations; and public and private schools.

This collection of information is necessary for applicants to apply for new grants under the GEAR UP program. Grants will be awarded on the basis of competitively reviewed applications submitted to the U.S. Department of Education, Office of Postsecondary Education (OPE), Policy, Planning & Innovation (PPI), GEAR UP grant competition. Continued support for these grants is based on the availability of funds and substantial progress in achieving project objectives. This application process occurs once each year to enable applicants to compete for Federal funds annually appropriated by Congress. The Department of Education is requesting approval of the information collection used to apply for new grants under this program.

The total annual public reporting and record keeping burden for this information is 20 hours per application. We anticipate that there will be 800 applications (770 Partnership Grant applications and 30 State Grant applications), for a total burden of 16,000 hours.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information associated with these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

(Catalog of Federal Domestic Assistance Number 84.334 Gaining Early Awareness and Readiness for Undergraduate Programs)

List of Subjects in 34 CFR Part 694

Colleges and universities, Elementary and secondary education, Grant programs-education, Student aid.

Dated: December 15, 1999.

A. Lee Fritschler,

Assistant Secretary for Postsecondary Education.

For the reasons discussed in the preamble, the Secretary proposes to amend title 34 of the Code of Federal Regulations by revising part 694 to read as follows:

PART 694–GAINING EARLY AWARENESS AND READINESS FOR UNDERGRADUATE PROGRAMS (GEAR UP)

Sec.

694.1 What is the maximum amount that the Secretary may award each fiscal year to a Partnership or a State under this program?
694.2 Which students must a Partnership, or a State that chooses to use the cohort approach in its project, serve under the program's early intervention component?
694.3 What are the requirements for a cohort?
694.4 Which students must a State or Partnership serve when there are changes in the cohort?
694.5 What requirements must be met by a Partnership or State that chooses to provide services to private school students under the program's early intervention component?
694.6 Who may provide GEAR UP services to students attending private schools?
694.7 What are the matching requirements for a GEAR UP Partnership?

694.8 What are the requirements that a Partnership must meet in designating a fiscal agent for its project under this program?
694.9 What is the maximum indirect cost rate for an agency of a State or local government?
694.10 What are the requirements for awards under the program's scholarship component under section 404E of the Higher Education Act of 1965, as amended (HEA)?
694.11 What are the disclosure requirements regarding an institution's treatment of a GEAR UP scholarship in relation to other student financial assistance?
694.12 Under what conditions may a Partnership that does not participate in the GEAR UP scholarship component under section 404E of the HEA provide financial assistance for postsecondary education to students under the GEAR UP early intervention component?
694.13 How does a State determine which State agency will apply for, and administer, a State grant under this program?
694.14 What requirements must be met by a Partnership or State participating in GEAR UP with respect to 21st Century Scholarship Certificates?
694.15 What requirements apply to a State that served students under the National Early Intervention Scholarship and Partnership program (NEISP) and that receives a GEAR UP grant?
694.16 What priority must the Secretary establish?
694.17 What priorities may the Secretary establish?

Authority: 20 U.S.C. 1070a–21 to 1070a–28

§ 694.1 What is the maximum amount that the Secretary may award each fiscal year to a Partnership or a State under this program?

(a) *Partnership grants.* The maximum amount that the Secretary may award each fiscal year for a GEAR UP Partnership grant is calculated by multiplying—

(1) $800; by

(2) The number of students the Partnership proposes to serve that year, as stated in the Partnership's plan.

(b) *State grants.* The Secretary establishes the maximum amount that may be awarded each fiscal year for a GEAR UP State grant in a notice published in the **Federal Register**.

(Authority: 20 U.S.C. 1070a–23)

§ 694.2 Which students must a Partnership, or a State that chooses to use the cohort approach in its project, serve under the program's early intervention component?

A Partnership, or a State that chooses to use a cohort approach in its GEAR UP early intervention component, must, except as provided in § 694.4—

(a) Provide services to at least one entire grade level (cohort) of students (subject to § 694.3(b)) beginning not later than the 7th grade;

(b) Ensure that supplemental appropriate services are targeted to the students with the greatest needs; and

(c) Ensure that services are provided through the 12th grade to those students.

(Authority: 20 U.S.C. 1070a–22)

§ 694.3 What are the requirements for a cohort?

(a) *In general.* Each cohort to be served by a Partnership or State must be from a participating school—

(1) That has a 7th grade; and

(2) In which at least 50 percent of the students are eligible for free or reduced-price lunch under the National School Lunch Act; or

(b) *Public housing exception.* If the Partnership or State determines it would promote program effectiveness, a cohort may consist of all of the students in a particular grade level at one or more participating schools who reside in public housing, as defined in section 3(b)(1) of the United States Housing Act of 1937.

(Authority: 20 U.S.C. 1070a–22)

§ 694.4 Which students must a State or Partnership serve when there are changes in the cohort?

(a) *At the school where the cohort began.* A Partnership or State must serve, as part of the cohort, any additional students who—

(1) Are at the grade level of the students in the cohort; and

(2) Begin attending the participating school at which the cohort began to receive GEAR UP services.

(b) *At a subsequent participating school.* If not all of the students in the cohort attend the same school after the cohort completes the last grade level offered by the school at which the cohort began to receive GEAR UP services, a Partnership or a State—

(1) May continue to provide GEAR UP services to all students in the cohort; and

(2) Must continue to provide GEAR UP services to at least those students in the cohort that attend participating schools that enroll a substantial majority of the students in the cohort.

(Authority: 20 U.S.C. 1070–a22)

§ 694.5 What requirements must be met by a Partnership or State that chooses to provide services to private school students under the program's early intervention component?

(a) *Secular, neutral, and nonideological services or benefits.* Educational services or other benefits, including materials and equipment, provided under GEAR UP by a Partnership or State that chooses to provide those services or benefits to students attending private schools, must be secular, neutral, and nonideological.

(b) *Control of funds.* In the case of a Partnership or State that chooses to provide services under GEAR UP to students attending private schools, the fiscal agent (in the case of a Partnership) or a State agency (in the case of a State) must—

(1) Control the funds used to provide services under GEAR UP to those students;

(2) Hold title to materials, equipment, and property purchased with GEAR UP funds for GEAR UP program uses and purposes related to those students; and

(3) Administer those GEAR UP funds and property.

(Authority: 20 U.S.C. 1070a–21 to 1070a–28)

§ 694.6 Who may provide GEAR UP services to students attending private schools?

(a) GEAR UP services to students attending private schools must be provided—

(1) By employees of a public agency; or

(2) Through contract by the public agency with an individual, association, agency, or organization.

(b) In providing GEAR UP services to students attending private schools, the employee, individual, association, agency, or organization must be independent of the private school that the students attend, and of any religious organization affiliated with the school, and that employment or contract must be under the control and supervision of the public agency.

(c) Federal funds used to provide GEAR UP services to students attending private schools may not be commingled with non-Federal funds.

(Authority: 1070a–21 to 1070a–28)

§ 694.7 What are the matching requirements for a GEAR UP Partnership?

(a) *In general.* A Partnership must—

(1) State in its application the percentage of the cost of the GEAR UP project the Partnership will provide for each year from non-Federal funds, subject to the requirements in paragraph (b) of this section; and

(2) Comply with the matching percentage stated in its application for each year of the project period.

(b) *Matching requirements.* (1) Except as provided in paragraph (b)(2) of this section, the non-Federal share of the cost of the GEAR UP project must be not

less than 50 percent of the total cost over the project period.

(2) A Partnership that has three or fewer institutions of higher education as members may provide less than 50 percent, but not less than 30 percent of the total cost over the project period if it includes—

(i) A fiscal agent that is eligible to receive funds under Title V, or Part B of Title III, or section 316 or 317 of the HEA, or a local educational agency;

(ii) Only participating schools with a 7th grade in which at least 75 percent of the students are eligible for free or reduced-price lunch under the National School Lunch Act; and

(iii) Only local educational agencies in which at least 50 percent of the students enrolled are eligible for free or reduced-price lunch under the National School Lunch Act.

(3) The non-Federal share of the cost of a GEAR UP project may be provided in cash or in-kind.

(Authority: 20 U.S.C. 1070a–23)

§ 694.8 What are the requirements that a Partnership must meet in designating a fiscal agent for its project under this program?

Although any member of a Partnership may organize the project, a Partnership must designate as the fiscal agent for its project under GEAR UP—

(a) A local educational agency; or

(b) An institution of higher education that is not pervasively sectarian.

(Authority: 20 U.S.C. 1070a–22)

§ 694.9 What is the maximum indirect cost rate for an agency of a State or local government?

Notwithstanding 34 CFR 75.560–75.562 and 34 CFR 80.22, the maximum indirect cost rate that an agency of a State or local government receiving funds under GEAR UP may use to charge indirect costs to these funds is the lesser of—

(a) The rate established by the negotiated indirect cost agreement; or

(b) Eight percent.

(Authority: 20 U.S.C. 1070a–21 to 1070a–28)

§ 694.10 What are the requirements for awards under the program's scholarship component under section 404E of the HEA?

(a) *Amount of scholarship.* (1) Except as provided in paragraph (a)(2) of this section, the amount of a scholarship awarded under section 404E of the HEA must be at least the lesser of—

(i) 75 percent of the average cost of attendance, as determined under section 472 of the HEA, for in-State students in 4-year programs of instruction at public institutions of higher education in the State; or

(ii) The maximum Federal Pell Grant award funded for the award year in which the scholarship will be awarded.

(2) If a student who is awarded a GEAR UP scholarship attends an institution on a less than full-time basis during any award year, the State or Partnership awarding the GEAR UP scholarship may reduce the scholarship amount, but in no case shall the percentage reduction in the scholarship be greater than the percentage reduction in tuition and fees charged to that student.

(b) *Pell Grant recipient priority.* A State, or a Partnership that chooses to participate in the scholarship component under section 404E of the HEA in its GEAR UP project—

(1) Must award GEAR UP scholarships first to students who will receive, or are eligible to receive, a Federal Pell Grant during the award year in which the GEAR UP scholarship is being awarded and who are eligible for a GEAR UP scholarship under the eligibility requirements in section 404E of the HEA; and

(2) May, if GEAR UP scholarship funds remain after awarding scholarships to students under paragraph (b)(1) of this section, award GEAR UP scholarships to other eligible students (who will not receive a Federal Pell Grant) after considering the need of those students for GEAR UP scholarships.

(c) *Continuation scholarships.* A State, or a Partnership that chooses to participate in the scholarship component in accordance with section 404E of the HEA in its GEAR UP project, must award continuation scholarships in successive award years to each student who received an initial scholarship and who continues to be eligible for a scholarship.

(Authority: 20 U.S.C. 1070a–25)

§ 694.11 What are the disclosure requirements regarding an institution's treatment of a GEAR UP scholarship in relation to other student financial assistance?

(a) *No disclosure.* No disclosure of an institution's policy for the treatment of a GEAR UP scholarship in relation to other student financial assistance is necessary if the institution's policy is as follows:

(1) *Other grant assistance.* A GEAR UP scholarship—

(i) Is not considered in the determination of a student's eligibility for other grant assistance provided under title IV of the HEA; and

(ii) Does not supplant other public or institutional gift aid that the student would otherwise have been eligible to receive (such as grants, scholarships, and tuition discounts) unless the conditions in § 694.11(b)(2) apply.

(2) *Cost of attendance.* A GEAR UP scholarship, in combination with other student financial assistance awarded under any title IV HEA program and any other grant or scholarship assistance, may not exceed the student's cost of attendance.

(3) *Overawards.* (i) *In general.* If the combination of the GEAR UP scholarship and other student financial assistance under title IV of the HEA and any other grant or scholarship assistance exceeds the student's cost of attendance, the institution must, before reducing public or institutional gift aid, reduce the assistance to zero, by the amount in excess of cost of attendance, in the following order—

(A) Loans;

(B) Need-based student employment;

(C) The GEAR UP scholarship;

(ii) *Exception.* The institution may reduce need-based employment first and loans second at the election of the student.

(4) Notwithstanding paragraph (a)(3) of this section, an institution may reduce its institutional aid before reducing a GEAR UP scholarship only if—

(i) It determines and documents in writing that there are exceptional circumstances related to the GEAR UP student's institutional aid that are unique to that GEAR UP student;

(ii) It documents and maintains in the GEAR UP student's file the modification that was made to the GEAR UP student's gift aid award package and the reason for the modification; and

(iii) It provides written notification to the GEAR UP student of the reason for and the specific modification that was made to the gift aid package.

(b) *Disclosure.* (1) Disclosure of an institution's policy for the treatment of a GEAR UP scholarship in relation to other student financial assistance is required if the institution does not follow the procedures set forth in paragraph (a) of this section.

(2) If an institution does not follow the procedures in paragraph (a) of this section it must—

(i) Establish a policy for the treatment of GEAR UP scholarships and inform all prospective students, as defined in § 668.41 of this chapter;

(ii) Notify the Department by September 1, 2000 that its treatment of GEAR UP scholarships with respect to institutional gift aid is different from the procedures in paragraph (a) of this section; and

(iii) If, after September 1, 2000, it elects to treat GEAR UP scholarships

differently from the procedures in paragraph (a) of this section, notify the Department in a timely manner of that decision.

(c) Notwithstanding the disclosure requirements with respect to GEAR UP and its relation to other student financial assistance, an institution must follow the procedures in paragraph (a) of this section as they relate to title IV aid.

(Authority: 20 U.S.C. 1070a–25; 20 U.S.C. 3474)

§ 694.12 Under what conditions may a Partnership that does not participate in the GEAR UP scholarship component under section 404E of the HEA provide financial assistance for postsecondary education to students under the GEAR UP early intervention component?

A GEAR UP Partnership that does not participate in the GEAR UP scholarship component under section 404E of the HEA may provide financial assistance for postsecondary education, either with funds under this chapter, or with non-Federal funds used to comply with the matching requirement, to students who participate in the early intervention component of GEAR UP if—

(a) The financial assistance is directly related to, and in support of, other activities of the Partnership under the early intervention component of GEAR UP; and

(b) It complies with the requirements in §§ 694.10(c) and 694.11.

(Authority: 20 U.S.C. 1070a–21 to 1070a–28)

§ 694.13 How does a State determine which State agency will apply for, and administer, a State grant under this program?

The Governor of a State must designate which State agency applies for, and administers, a State grant under GEAR UP.

(Authority: 20 U.S.C. 1070a–21 to 1070a–28)

§ 694.14 What requirements must be met by a Partnership or State participating in GEAR UP with respect to 21st Century Scholarship Certificates?

(a) A State or Partnership must provide, in accordance with procedures the Secretary may specify, a 21st Century Scholar Certificate from the Secretary to each student participating in the early intervention component of its GEAR UP project.

(b) 21st Century Scholarship Certificates must be personalized and indicate the amount of Federal financial aid for college that a student may be eligible to receive.

(Authority: 20 U.S.C. 1070a–26)

§ 694.15 What requirements apply to a State that served students under the National Early Intervention Scholarship and Partnership program (NEISP) and that receives a GEAR UP grant?

Any State that receives a grant under this part and that served students under the NEISP program on October 6, 1998 must continue to provide services under this part to those students until they complete secondary school.

(Authority: 20 U.S.C. 1070a–21)

§ 694.16 What priority must the Secretary establish?

For any fiscal year, the Secretary selects the following priority for any State grant applicant that—

(a) On October 6, 1998, carried out successful educational opportunity programs under the National Early Intervention Scholarship and Partnership program (as that program was in effect on that date); and

(b) Has a prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies.

(Authority: 20 U.S.C. 1070a–21)

§ 694.17 What priorities may the Secretary establish?

For any fiscal year, the Secretary may select one or more of the following priorities:

(a) Projects by Partnerships or States that serve a substantial number or percentage of students who reside, or attend a school, in an Empowerment Zone, including a Supplemental Empowerment Zone, or Enterprise Community designated by the U.S. Department of Housing and Urban Development or the U.S. Department of Agriculture.

(b) Partnerships that establish or maintain a financial assistance program that awards scholarships to students, either in accordance with section 404E of the HEA, or in accordance with § 694.12, to strengthen the early intervention component of its GEAR UP project.

(Authority: 20 U.S.C. 1070a–21 to 1070a–28)

[FR Doc. 99–32918 Filed 12–20–99; 8:45 am]

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federal register

Tuesday
December 21, 1999

Part III

Department of Education

Bilingual Education: Career Ladder Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.195E]

Bilingual Education: Career Ladder Program

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2000.

NOTE TO APPLICANTS: This notice is a complete application package. Together with the statute authorizing the program and the applicable regulations governing this program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for a grant under this program.

PURPOSE OF PROGRAM: This program provides grants to upgrade the qualifications and skills of noncertified educational personnel, especially educational paraprofessionals, to meet high professional standards, including certification and licensure as bilingual teachers and other educational personnel who serve limited English proficient students, and to help recruit and train secondary students as bilingual education teachers and other educational personnel to serve limited English proficient students.

ELIGIBLE APPLICANTS: (1) One or more institutions of higher education (IHEs) that have entered into consortia arrangements with local educational agencies (LEAs) or State educational agencies (SEAs), to achieve the purposes of this section. Consortia may include community-based organizations or professional education organizations.

APPLICATIONS AVAILABLE: December 21, 1999.

Deadline for Transmittal of Applications: February 14, 2000.

Deadline for Intergovernmental Review: April 14, 2000.

Available Funds: $5 million.

Estimated Range of Awards: $150,000–$250,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 25.

Note: The Department of Education is not bound by any estimates in this notice.

Project Period: 60 Months.

APPLICABLE REGULATIONS: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

DESCRIPTION OF PROGRAM: The statutory authorization for this program, and the application requirements that apply to this competition, are in sections 7144 and 7146–7150 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994) (the Act) (20 U.S.C. 7474 and 7476–7480).

Funds under this program may be used: to develop bilingual education career ladder program curricula appropriate to the needs of consortia participants; provide assistance for stipends and costs related to tuition fees and books for coursework required to complete degree and certification requirements for bilingual education teachers; and for programs to introduce secondary school students to careers in bilingual education teaching that are coordinated with other activities assisted under this program. Activities conducted under this program must assist educational personnel in meeting State and local certification requirements for bilingual education and, wherever possible, must lead to the awarding of college or university credit.

Priorities

Competitive Priority 1

The Secretary, under 34 CFR 75.105(c)(2)(i) and 34 CFR 299.3(b), gives preference to applications that meet the following competitive priority. The Secretary awards up to 3 points for an application that meets this competitive priority. These points are in addition to any points the application earns under the selection criteria for the program:

Projects that will contribute to a systemic educational reform in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture, and are made an integral part of the Zone's or Community's comprehensive community revitalization strategies.

Note: For a list of areas that have been designated as Empowerment Zones and Enterprise Communities go to: http://www.ezec.gov/ezec/mainmap.html and http://www.hud.gov/pressrel/ezec/urban.html

Competitive Priority 2

Under 34 CFR 75.105(c)(2)(ii) and section 7144(d) of the Act, the Secretary gives a competitive preference to applications that meet the following priority:

Applications that propose to provide for:

1. Participant completion of baccalaureate and master's degree teacher education programs, and certification requirements and may include effective employment placement activities;

2. The development of teacher proficiency in English as a second language, including demonstrating proficiency in the instructional use of English and, as appropriate, a second language in classroom contexts; coordination with programs for the recruitment and retention of bilingual students in secondary and postsecondary programs training to become bilingual educators; and the applicant's contribution of additional student financial aid to participating students.

The Secretary selects applications that meet this priority over applications of comparable merit, which do not meet the priority.

Invitational Priority

The Secretary is also particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority receives no competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Applicants who propose to collaborate with 2-year institutions of higher education to develop or improve teacher preparation programs for bilingual paraprofessionals.

Selection Criteria

The Secretary uses the following selection criteria in 34 CFR 75.210 to evaluate applications for new grants under this competition.

The maximum score for all of these criteria is 100 points.

The maximum score for each criterion is indicated in parentheses.

(a) *Need for project.* (10 points) (1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the following factors:

(i) The magnitude or severity of the problem to be addressed by the proposed project.

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and the magnitude of those gaps or weaknesses.

(Authority: 34 CFR 75.210 (a)(2)(i) and (v))

(b) *Quality of the project design.* (55 points) (1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(iv) The extent to which the proposed activities constitute a coherent, sustained program of training in the field.

(v) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(vi) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(vii) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(viii) The extent to which fellowship recipients or other project participants are to be selected on the basis of academic excellence.

(Authority: 34 CFR 75.210(c)(2)(i), (ii), (iv), (xii), (xiii),(xvi), (xviii), and (xxiii))

(c) *Quality of project services.* (10 points) (1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factor: The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(Authority: 34 CFR 75.210(d)(2) and (3)(v))

(d) *Quality of project personnel.* (5 points) (1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factor: The qualifications, including relevant training and experience, of key project personnel.

(Authority: 34 CFR 75.210(e)(2) and (3)(ii))

(e) *Quality of the management plan.* (5 points) (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factor: the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(Authority: 34 CFR 75.210(g)(2)(i)))

(f) *Quality of the project evaluation.* (15 points) (1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(Authority: 34 CFR 75.210(h)(2) (iii), (iv), and (vi)).

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

If you are an applicant, you must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. If you propose to perform activities in more than one State, you should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list in the **Federal Register** on April 28, 1999 (64 FR 22960–22963) or you may view the latest SPOC list on the OMB website at: *http://www,whitehouse.gov/omb/grants*

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #84.195E, U.S. Department of Education, Room 7E200, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

INSTRUCTIONS FOR TRANSMITTAL OF APPLICATIONS:

(a) If you want to apply for a grant, you must —

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.195E), Washington, DC 20202–4725, or

(2) Hand-deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to: 1U.S. Department of Education, Application Control Center, Attention: (CFDA #84.195E), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number and suffix letter, if any, of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this notice is divided into three parts, plus a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with Section 427 of the General Education Provisions Act, questions and answers on this program (located at the end of the notice) and various assurances, certifications, and required documentation. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

Part III: Application Narrative.

Additional Materials

a. Estimated Public Reporting Burden.

b. Group Application Certification.

c. Participant Data.

d. Project Documentation.

e. Program Assurances.

f. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.

g. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

h. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

(**Note:** This form is intended for the use of grantees and should not be transmitted to the Department.)

i. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. The document has been marked to reflect statutory changes.

ii. An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. All applicants must submit ONE original signed application, including ink signatures on all forms and assurances, and TWO copies of the application. Please mark each application as original or copy. No grant may be awarded unless a completed application has been received.

FOR FURTHER INFORMATION CONTACT: Carol Manitaras carol manitaras@ed.gov (202) 205–9729 or Darlene Miles darlene miles@ed.gov (202) 205–8259, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5090, Switzer Building, Washington, DC 20202–6510. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this notice in an alternate format (e.g., braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternate format the standard forms included in the notice.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://ocfo.ed.gov/fedreg.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

Program Authority: 20 U.S.C. 7474.

Art Love,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1885–0542, Exp. Date: 12/31/00. The time required to complete this information collection is estimated to average 120 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, DC 20202–4651. *If you have any comments or concerns regarding the status of your individual submission of this form, write directly to:* Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6510.

The following forms and other items must be included in the application:

1. Application for Federal Assistance (SF 424)

2. Group Application Certification (if applicable)

3. Budget Information (ED Form No. 524)

4. Itemized Budget for each year (attached to ED Form No. 524)

5. Participant Data—approximate number of participants to be served each year.

6. Project Documentation—Section A—Copy of Transmittal Letter to SEA requesting SEA to comment on application; Section B—Documentation of Empowerment Zone or Enterprise Community—if applicable

7. Program Assurances

8. Assurances—Non-Construction Programs (SF 424B)

9. Certifications Regarding Lobbying; Debarment Suspension and Other

Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013)

10. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014)

11. Disclosure of Lobbying Activities (SF-LLL)

12. Notice to all Applicants (See form provided below)

13. Table of Contents

14. One-page single-spaced abstract

15. Application narrative (Not to exceed 30 double-spaced pages, see instructions below)

16. *One* original and *two* copies of the application for transmittal to the Department's Application Control Center

Mandatory Page Limits for the Application Narrative

The narrative is the section of the application where you address the selection criteria used by reviewers in evaluating the application. You must limit the narrative to the equivalent of no more than 30 pages, using the following standards:

(1) A page is 8.5″ x 11″, on one side only with 1″ margins at the top, bottom, and both sides.

(2) You must double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables figures and graphs.

If you use a proportional computer font, you may not use a font smaller than a 12-point font. If you use a non-proportional font or a typewriter, you may not use more than 12 characters per inch.

The page limit does not apply to the Application for Federal Assistance Form (ED 424); the Budget Information Form (ED 524) and attached itemization of costs; the other application forms and attachments to those forms; the assurances and certifications; or the one-page abstract and table of contents. The page limit applies only to item 15 in the Checklist for Applicants provided above.

IF, IN ORDER TO MEET THE PAGE LIMIT, YOU USE PRINT SIZE, SPACING, OR MARGINS SMALLER THAN THE STANDARD SPECIFIED IN THIS NOTICE, YOUR APPLICATION WILL NOT BE CONSIDERED FOR FUNDING.

Application Narrative and Abstract

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Provide position descriptions for key personnel. This package includes questions and answers to assist you in preparing the narrative portion of your application. Prepare a one-page single-spaced abstract, which summarizes the proposed project activities, the expected outcomes, and how the application addresses the invitational priority, if applicable.

Budget

Budget line items must support the goals and objectives of the proposed project and be directly applicable to the program design and all other project components. Prepare an itemized budget for each year of requested funding. Indirect costs for institutions of higher education which are the fiscal agents for Career Ladder Programs are limited to the lower of either 8% of a modified total direct cost base or the institution for higher education's actual indirect cost agreement. A modified direct cost base is defined as total direct costs less stipends, tuition and related fees, and capital expenditures of $5,000 or more. In describing student support costs distinguish costs for tuition and fees from costs for stipends.

Final Application Preparation

Use the above checklist to verify that all items are addressed. Prepare one original with an original signature, and include three additional copies. Do not use elaborate bindings or covers. The application package must be mailed to the Application Control Center (ACC) and postmarked by the deadline date of February 23, 1999.

Submission of Application to State Educational Agency

Section 7146(a)(4) of the Act (Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994, Pub. L. 103–382) requires all applicants except schools funded by the Bureau of Indian Affairs to submit a copy of their application to their State educational agency (SEA) for review and comment (20 U.S.C. 7476(a) (4)). Section 75.156 of the Education Department General Administrative Regulations (EDGAR) requires these applicants to submit their application to the SEA on or before the deadline date for submitting their application to the Department of Education. This section of EDGAR also requires applicants to attach to their application a copy of their letter that requests the SEA to comment on the application (34 CFR 75.156). A copy of this letter should be attached to the Project Documentation Form contained in this application package.

Applicants that do not submit a copy of their application to their SEA will not be considered for funding.

Questions and Answers

Does the Career Ladder Program have specific evaluation requirements?

Yes, the evaluation requirements are described in section 7149 of Title VII of ESEA, 20 U.S.C. 7479.

What requirements must grantees meet related to teacher certification?

The Title VII statute requires grantees to assist educational personnel in meeting State and local certification requirements. However, because certification requirements vary among States, applicants are given flexibility in designing activities that lead to meeting State and local certification requirements.

May program budgets include costs for items other than student tuition and fees?

Project budgets should reflect the proposed program activities. In addition to student support costs, budget items may include costs for personnel, supplies or equipment, and other reasonable and necessary costs to support developmental activities.

What information may be helpful in preparing the application narrative for a Career Ladder Program?

In responding to the selection criteria applicants may wish to consider the following questions as a guide for preparing application narrative.

- What are the specific responsibilities of districts, schools, institutions of higher education and other partnership organizations in planning, implementing and evaluating the proposed program? How is the program linked to the school district's overall professional development plan?
- What resources and support will each of the consortia members provide? How will resources be integrated to ensure maximum effectiveness of the program and to promote capacity building and long-range collaboration?
- How does the training curricula reflect high standards for pedagogy, content, and proficiency in English and a second language to ensure that participants are effectively prepared to provide instruction and support to LEP students?
- How will the program assist in systemically reforming policies and practices in the target schools and in the IHE related to the preparation of new teachers, the induction of new bilingual/ESL teachers, clinical experiences for new bilingual/ESL teachers and other educational

personnel, or professional development opportunities for all teachers?

• What special selection criteria will the applicant adopt to ensure that individuals selected to participate in the program hold promise for successfully completing program requirements?

• What special support will be provided to participants by experienced bilingual/ESL teachers, higher education faculty, and school administrators to guide them during their period of induction?

• How will the instructional responsibilities of participants be balanced with appropriate professional development, support and planning time?

• How will clinical experiences for preservice participants be structured to ensure that they are well-supervised, of sufficient duration and in a setting which provides opportunities for participants to experience a variety of effective bilingual education instructional methods and approaches?

• How is the training curriculum based on current research related to effective teaching and learning? What evidence of effectiveness supports the training model?

• What are the expected outcomes for participant learning, effectiveness in the instructional setting, reform and improvement in the school or the university? What measures will the proposed program use to collect data on the effectiveness of the program in meeting its objectives, such as: field practice assessments, National or State benchmark tests, surveys of graduates, mentor teachers, school administrators, rates of transfer from 2-year to 4-year institutions, graduate rates, placement rates? How are needs, objectives, activities and measures linked?

• How will the program evaluation incorporate strategies for assessing the progress and performance of participants; communicating meaningful, regular and timely feedback to participants; improving the quality of the training program; documenting and identifying exemplary program features and successful strategies; and reporting on specific data related to the number of participants completing the program and the number of graduates placed in the instructional setting?

In addition, applicants may wish to consider the Department of Education Professional Development Principles in planning a Career Ladder Program.

The following are the professional development principles:

• Focuses on teachers as central to student learning, yet includes all other members of the school community;

• Focuses on individual, collegial and organizational improvement;

• Respects and nurtures the intellectual and leadership capacity of teachers, principals, and others in the school community;

• Reflects best available research and practice in teaching, learning, and leadership; enables teachers to develop further expertise in subject content, teaching strategies, uses of technologies, and other essential elements in teaching to high standards;

• Promotes continuous inquiry and improvement embedded in the daily life of schools;

• Is planned collaboratively by those who will participate in and facilitate that development;

• Requires substantial time and other resources;

• Is driven by a coherent long-term plan;

• Is evaluated ultimately on the basis of its impact on teacher effectiveness and student learning; and uses this assessment to guide subsequent professional development efforts.

What other information may be helpful in applying for a Career Ladder Program?

Applicants are reminded that they must submit a copy of their application to the SEA for review and comment. In addition, applicants must submit a copy of their application to the State Single Point of Contact to satisfy the requirements of Executive Order 12372. The SEA review requirement and the requirements for Executive Order 12372 are two separate requirements.

BILLING CODE 4000–01–p

Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format.

U.S. Department of Education

Form Approved
OMB No. 1875-0106
Exp. 06/30/2001

Applicant Information

1. Name and Address
Legal Name:
Address:
City State County ZIP Code + 4

Organizational Unit

2. Applicant's D-U-N-S Number
3. Applicant's T-I-N -
4. Catalog of Federal Domestic Assistance #: 8 4 1 9 5 E → Title: Bilingual Education ~~Career Ladder Program~~
5. Project Director:
Address:
City State ZIP Code + 4
Tel. #: ( ) - Fax #: ( ) -
E-Mail Address:
6. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)
7. Type of Applicant *(Enter appropriate letter in the box.)*

A State	H Independent School District
B County	I Public College or University
C Municipal	J Private, Non-Profit College or University
D Township	K Indian Tribe
E Interstate	L Individual
F Intermunicipal	M Private, Profit-Making Organization
G Special District	N Other *(Specify)*:

8. Novice Applicant ☐ Yes ☐ No

Application Information

9. Type of Submission:

—PreApplication	*—Application*
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?
☐ Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/___
☐ No *(If "No," check appropriate box below.)*
☐ Program is not covered by E.O. 12372.
☐ Program has not been selected by State for review.

11. Proposed Project Dates: Start Date: ___/___/___ End Date: ___/___/___

12. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No
a. If "Yes," Exemption(s) #: *OR* b. Assurance of Compliance #:
c. IRB approval date: ☐ Full IRB or ☐ Expedited Review

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative
b. Title
c. Tel. #: ( ) - Fax #: ( ) -
d. E-Mail Address:
e. Signature of Authorized Representative Date: ___/___/___

REV. 11/12/99 ED 424

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Tax Identification Number.** Enter the tax identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

7. **Type of Applicant.** Enter the appropriate letter in the box provided.

8. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

9. **Type of Submission.** Self-explanatory.

10. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

11. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

12. **Human Subjects.** Check "Yes" or "No". If research activities involving human subjects are not planned at any time during the proposed project period, check **"No." The remaining parts of item 12 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If all the research activities are designated to be exempt under the regulations, enter, in item 12a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 12a, are appropriate. **Provide this narrative information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 12.**

    If some or all of the planned research activities involving human subjects are covered (nonexempt), skip item 12a and continue with the remaining parts of item 12, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 12b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 12c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 12c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 12b and skip 12c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 CFR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application.

Authorized Representative					
Typed Name	Title	Signature	Date Signed	Telephone Number (including Area Code)	Name of Institution/ Organization

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number *Draft*

Expiration Date: *Pending OMB Clearance*

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED Form No. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

PARTICIPANT DATA

Note: This form must be completed by applicants under the following programs:

- **Teachers and Personnel Grants**
- **Career Ladder Program**
- **Training for all Teachers**

Number of proposed participants in each of the following categories to be served each year of the grant.

Preservice Teachers _____
(who are not paraprofessionals)

Preservice Teachers _____
(who are currently paraprofessionals)

Inservice Teachers _____

Other Educational Personnel _____
(Specify type of personnel below)

_____ _____

_____ _____

Degree level(s) to be attained (if applicable) _____

Certification Type(s) to be attained _____

Language(s) of Participants _____
(other than English)

_____

_____

PROJECT DOCUMENTATION

Note: Submit the appropriate documents and information as specified below for the following programs.

- Teachers and Personnel Grants
- Career Ladder Program
- Training for All Teachers

Section A

A copy of the applicant's transmittal letter requesting the appropriate State educational agency to comment on the application.

Section B

If applicable, identify on the line below the Empowerment Zone, Supplemental Empowerment Zone, or Enterprise Community that the proposed project will serve.
(See the competitive priority and the list of designated Empowerment Zones in previous sections of this application package.)

_____

PROGRAM ASSURANCES

NOTE: The authorizing statute requires applicants under certain programs to provide assurances. These assurances are specified below under the relevant programs. If your application pertains to any of these programs, this form must be completed.

As the duly authorized representative of the applicant, I certify that the applicant, in regard to the program relevant to this application:

- Teachers and Personnel Grants
- Career Ladder Program
- Training for All Teachers

Will include, if applicable, as part of the project implementing a master's or doctoral-level program, a training practicum in a local school program serving children and youth of limited English proficiency.
(Authority: 20 U.S.C. 7426(g)(3)

_____
Authorized Representative

Name: _____

Signature: _____

Typed Name: _____

Date: _____

Applicant Organization: _____

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

Approved by OMB
0348-0046

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

1. Type of Federal Action: a. contract ____ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** a. bid/offer/application _____ b. initial award c. post-award	**3. Report Type:** a. initial filing _____ b. material change **For material change only:** Year _____ quarter _____ Date of last report_____
4. Name and Address of Reporting Entity: ____ Prime _____ Subawardee Tier_____, if Known: **Congressional District, if known:**	**5. If Reporting Entity in No. 4 is Subawardee,** Enter Name and Address of Prime: **Congressional District, if known:**	
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____	
8. Federal Action Number, *if known:*	**9. Award Amount,** *if known:* **$**	
10. a. Name and Address of Lobbying Registrant *(if individual, last name, first name, MI):*	**b. Individuals Performing Services** *(including address if different from No. 10a) (last name, first name, MI):*	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:**_____ **Title:**_____ **Telephone No.:** _____ **Date:** _____	
Federal Use Only	**Authorized for Local Reproduction** **Standard Form - LLL (Rev. 7-97)**	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

OMB Control No. 1801-0004 (Exp. 8/31/2001)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to**: U.S. Department of Education, Washington, DC 20202-4651.

[FR Doc. 99–33073 Filed 12–20–99; 8:45 am]
BILLING CODE 4000–01–C

federal register

Tuesday
December 21, 1999

Part IV

Department of Agriculture

Rural Housing Service

Grants and Cooperative Agreements; Notices of Availability of Funds (NOFA)

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Availability of Funds; Multi-Family Housing, Single Family Housing

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS) announces the availability of housing funds for fiscal year 2000 (FY 2000). This action is taken to comply with 42 U.S.C. 1490p which requires that RHS publish in the **Federal Register** notice of the availability of any housing assistance.

EFFECTIVE DATE: December 21, 1999.

FOR FURTHER INFORMATION CONTACT: Carl Wagner, Director, Multi-Family Housing Processing Division, (STOP 0781), or Scott Barringer, Senior Loan Officer, Single Family Housing Processing Division, (STOP 0783), U.S. Department of Agriculture, 1400 Independence Ave., SW., Washington, DC, 20250, telephones (202) 720–1604, and (202) 720–1474, respectively. (These are not toll free numbers).

SUPPLEMENTARY INFORMATION:

Programs Affected

The following programs are subject to the provisions of Executive Order 12372 that requires intergovernmental consultation with State and local officials. These programs or activities are listed in the Catalog of Federal Domestic Assistance under Nos.

10.405 Farm Labor Housing (LH) Loans and Grants
10.410 Very Low to Moderate Income Housing Loans
10.411 Rural Housing Site Loans and Self-Help Housing Land Development Loans
10.415 Rural Rental Housing Loans
10.417 Very Low Income Housing Repair Loans and Grants
10.420 Rural Self-Help Housing Technical Assistance
10.427 Rural Rental Assistance Payments
10.433 Rural Housing Preservation Grants
10.442 Housing Application Packaging Grants

Discussion of Notice

Part 1940, subpart L of 7 CFR contains the ''Methodology and Formulas for Allocation of Loan and Grant Program Funds.'' The following guidance has been provided to our State offices on FY 2000 appropriations and access to funds. Separate guidance has been provided to our State offices for assistance available in our Multi-and Single-Family Housing programs as follows:

Multi-Family Housing (MFH)

I. General

A. This provides guidance on MFH funding for the Rural Rental Housing program (RRH) for FY 2000. Allocation computations have been performed in accordance with 7 CFR 1940.575 and 1940.578. For FY 2000, State Directors, under the Rural Housing Assistance Grants (RHAG), will have the flexibility to transfer their initial allocations of budget authority between the Single Family Housing (SFH) section 504 Rural Housing Grants and section 533 Housing Preservation Grant (HPG) programs.

B. MFH loan and grant levels for FY 2000 are as follows:

MFH Loan Programs Credit Sales	$1,250,000
Section 514 Farm Labor Housing (LH) loans	25,001,005
Section 515 Rural Rental Housing (RRH) loans	114,322,076
Section 521 Rental Assistance (RA)	634,100,000
Section 516 LH grants	[1] 13,990,844
Sections 525 Technical and Supervisory Assistance grants: (TSA) and 509 Housing Application Packaging grants (HAPG) (Shared between single and multi-family housing)	[1] 2,033,563
Section 533 Housing Preservation grants (HPG)	[1] 5,515,344
Section 538 Guaranteed Rural Rental Housing program	100,000,000
Natural Disaster Funds (section 514 loans)	4,974,574
Natural Disaster Funds (section 516 grants)	3,000,000

[1] Includes carryover.

II. Funds Not Allocated to States

A. Credit Sales Authority

For FY 2000, $1,250,000 will be set aside for credit sales to program and nonprogram buyers. Credit sale funding will not be allocated by State.

B. Section 538 Guaranteed Rural Rental Housing Program

Guaranteed loan funds will be made available under a Notice of Funding Availability (NOFA) being published in this **Federal Register**. Additional guidance will be provided at that time.

C. Natural Disaster Funds

Funds are available until exhausted to those States that have received a Presidential Declaration.

III. Farm Labor Housing (LH) Loans and Grants

A. Section 514 Farm LH Loans

1. These loans are funded in accordance with 7 CFR 1940.579(a).

FY 2000 Appropriation	$25,001,105
Available for Off-Farm Loans	20,501,000
Available for On-Farm Loans	1,500,000
National Office Reserve	3,000,105

2. Off-farm loan funds will be made available under a NOFA being published in this **Federal Register**. Additional guidance will be provided in the NOFA.

B. Section 516 Farm LH Grants

1. Grants are funded in accordance with 7 CFR 1940.579(b). Unobligated prior year balances and cancellations will be added to the amount shown.

FY 2000 Appropriation (includes carryover)	$13,990,844
Available for LH Grants for off-farm	9,150,000
Available for Technical Assistance Grants	1,350,000
National Office Reserve	3,490,844

2. Labor Housing grant funds for off-farm will be made available under a NOFA being published in this **Federal Register**. Additional guidance will be provided in the NOFA.

3. Technical assistance grants will be made available under a NOFA being published in this **Federal Register**. Additional guidance will be provided in the NOFA.

C. Rental Assistance for LH

Labor Housing RA will be held in the National office for use with LH loan and grant applications. RA is only available with an LH loan of at least 5 percent of the total development cost. Projects without a LH loan cannot receive RA.

IV. Section 515 RRH Loan Funds

FY 2000 section 515 Rural Rental Housing allocation (Total)	$114,322,076
New Construction funds and set-asides	49,783,694
New construction loans	22,500,000
Set-aside for nonprofits	10,288,987
Set-aside for underserved counties and colonias	5,716,104
Earmark for EZ, EC, or REAP Zones	9,778,603
State RA designated reserve	1,500,000
Rehab and repair funds and equity	55,000,000
Rehab and repair loans	50,000,000
Designated equity loan reserve	5,000,000
General reserve	9,538,382

A. New Construction Loan Funds

New construction loan funds will be made available using a national NOFA being published in this **Federal Register**. Upon closing of the NOFA, States will submit a list, in rank order of the eligible projects.

B. National Office New Construction Set-Asides

The following legislatively mandated set-asides of funds are part of the National office set-aside:

1. *Nonprofit Set-aside* An amount of $10,288,987 has been set aside for nonprofit applicants. All Nonprofit loan proposals must be located in designated places as defined in RD Instruction 1944–E.

2. *Underserved Counties and Colonias Set-Aside.* An amount of $5,716,104 has been set aside for loan requests to develop units in one of the underserved 100 most needy counties or colonias as defined in section 509(f) of the Housing Act of 1949 as amended. Priority will be given to proposals to develop units in colonias or tribal lands.

3. *EZ, EC or REAP Zone Earmark.* An amount of $9,778,603 has been earmarked for loan requests to develop units in EZ or EC communities or REAP Zones until June 30, 2000.

C. Rental Assistance (RA)

Limited new construction RA will be held in the National office for use with section 515 Rural Rental Housing loans.

D. Designated Reserves for State RA

An amount of $1.5 million of section 515 loan funds has been set aside for matching with projects in which an active State sponsored RA program is available. The State RA program must be comparable to the RHS RA program.

E. Repair and Rehabilitation Loans

Tenant health and safety continues to be a top priority. Repair and rehabilitation funds must be first targeted to RRH facilities that have physical conditions that effect the health and safety of tenants and then made available to facilities that have deferred maintenance. All funds will be held in the National office and will be distributed based upon indicated rehabilitation needs in the MFH survey conducted in September 1999.

F. Designated Reserve for Equity Loans

An amount of $5 million has been designated for the equity loan preservation incentive described in RD Instruction 1965–E. The $5 million will be further divided into $4 million for equity loan requests currently on the pending funding list and $1 million to facilitate the transfer of properties from for-profit owners to nonprofit corporations and public bodies. Funds for such transfers would be authorized only for for-profit owners who are currently on the pending funding list who agree to transfer to nonprofit corporations or public bodies rather than to remain on the pending list. If insufficient transfer requests are generated to utilize the full $1 million set aside for nonprofit and public body transfers, the balance will revert to the existing pending equity loan funding list.

G. General Reserve

There is one general reserve fund of $9,538,382. Some examples of immediate allowable uses include, but are not limited to hardships and emergencies, RH cooperatives or group homes, or RRH preservation.

V. Section 533 Housing Preservation Grants (HPG).

Total Available	$5,515,344
Less General Reserve	550,000
Less Earmark for EZ, EC or REAP Zones	600,000
Total Available for Distribution	4,365,344

Amount available for allocation. See end of this Notice for HPG State allocations. Fund availability will be announced in a NOFA being published in this Federal Register.

The amount of $600,000 is earmarked for EZ, EC or REAP Zones until June 30, 2000.

Single Family Housing (SFH)

I. General

A. This notice provides SFH allocations for FY 2000. Allocation computations have been made in accordance with 7 CFR 1940.563 through 1940.568. Information on basic formula criteria, data source and weight, administrative allocation, pooling of funds, and availability of the allocation are located on a chart at the end of this notice.

B. The SFH levels authorized for FY 2000 are as follows:

Section 502 Guaranteed Rural Housing (RH) loans: Non-subsidized guarantees	$3,200,000,000
Section 502 Direct RH loans:	
Very Low-Income loans	484,000,000
Low-Income loans	616,000,000
Credit Sales (program and non program)	6,254,888
Section 504 Housing Repair loans	32,395,288
Section 504 Housing Repair grants	[1] 25,650,573
Section 509 Compensation for construction defects	[1] 1,297,169
Section 523 Mutual and Self-Help Technical Assistance and grants	[1] 29,215,509
Section 523 Self-Help Site loans	5,008,912
Section 524 RH Site loans	5,000,000
Section 306C Water and Waste Disposal (WWD) grants	1,889,621
Sections 525 Technical and Supervisory Assistance grants: (TSA) and 509 Housing Application Packaging grants (HAPG) (Shared Between Single and Multi-Family Housing)	[1] 2,033,563
Natural Disaster Funds (section 502 loans)	60,716,817
Natural Disaster Funds (section 504 loans)	15,619,877
Natural Disaster Funds (section 504 grants)	11,591,985

[1] Includes carryover.

C. SFH funding not allocated to States are:

1. *Credit Sale Authority.* States will use loan funds to finance program Real Estate Owned (REO) sales to program applicants when all credit sale authority is exhausted.

2. *Section 509 Compensation for Construction Defects.* All claims for compensation for construction defects must be submitted to the National office for authorization prior to approval.

3. *Section 523 Mutual and Self-Help Technical Assistance Grants.* $28 million has been appropriated for section 523 Mutual and Self-Help Technical Assistance Grants. Of these funds, $1 million is earmarked for EZ, EC or REAP Zones until June 30, 2000. The State Director must request funding approval from the National office for all requests. A technical review and analysis must be completed by the Technical and Management Assistance (T&MA) contractor on all predevelopment, new, and existing (refunding) grant applications.

4. *Section 523 Mutual and Self-Help Site Loans and Section 524 RH Site Loans.* The State Director must request funding authority from the National office prior to obligating loan funds.

5. *Section 306C WWD Grants to Individuals in Colonias.* The objective of the section 306C WWD individual grant program is to facilitate the use of community water or waste disposal systems for the residents of the colonias along the U.S.-Mexico border.

The total amount available to Arizona, California, New Mexico, and Texas will

be $1,889,621 for FY 2000. This amount includes the carryover unobligated balance of $389,621 and the transferred amount of $1.5 million from the Rural Utilities Service (RUS) to RHS for processing individual grant applications. These States will have access to the equal quarterly allocation distributions.

6. *Section 525 Technical and Supervisory Assistance (TSA) and Section 509 Housing Application Packaging Grants (HAPG).* $1 million of new funds and $1,033,563 of carry-over funds from previous years remain available for the TSA and HAPG programs. State Directors should submit proposals from potential applicants to the National office for review and concurrence prior to authorizing an application. The 29 eligible States under HAPG that have active grantees operating will be able to access up to $5,000 for section 502 or 504 loan and grant programs in order to continue operations. Reserve requests will be considered on a first-come, first-served basis.

7. *Natural Disaster Funds.* Funds are available until exhausted to those States that have received a Presidential Declaration.

8. *Deferred Mortgage Payment Demonstration.* There is no FY 2000 funding provided for deferred mortgage authority or loans for deferred mortgage assumptions.

9. *Section 502 Direct Funds for Families Not Qualifying for Payment Assistance.* Funds from State's allocation may be used for qualified very low- and low-income applicants when the payment assistance formula shows there is no need for the subsidy.

II. State Allocations

A. Section 502 Nonsubsidized Guaranteed RH (GRH) Loans

1. *Amount Available for Allocation.*

Total Available	$3,200,000,000
Less National Office General Reserve	630,000,000
Less Special Outreach Area Reserve	270,000,000
Basic Formula—Administrative Allocation	2,300,000,000

2. *National Office General Reserve.* The Administrator may restrict access to this reserve for States not meeting their goals in special outreach areas.

3. *Reservation of Funds.* Because it is anticipated that demand will exceed available funds, States must use the reservation of funds system per § 1980.351 of RD Instruction 1980–D.

4. *Special Outreach Areas.* FY 2000 GRH funding is allocated to States in two funding streams (80/20) similar to the 60/40 income split for direct SFH funds. Eighty percent of GRH funds may be used in any eligible area. Twenty percent of GRH funds are to be used in special outreach areas. Special outreach areas are counties with median incomes at or below the State's nonmetropolitan median income. Each funding stream will independently be subject to pooling.

5. *National Office Special Area Outreach Reserve.* A special outreach area reserve fund has been established at the National office. Funds from this reserve may only be used in special outreach areas.

6. *Suballocation by the State Director.* The State Director may retain funds at the State office level or suballocate to the Area or Field office level.

B. Section 502 Direct RH Loans

1. *Amount Available for Allocation.*

Total Available	$1,100,000,000
Less Required Set Aside for:	
Underserved Counties and Colonias	55,000,000
EZ, EC and REAP Earmark	60,500,000
Less General Reserve	96,500,000
Administrator's Reserve	30,000,000
Hardships & Homelessness	3,500,000
Homeownership Partnership	60,000,000
Rural Housing Demonstration Program	3,000,000
Less Designated Reserve for Self-Help	110,000,000
Basic Formula Administrative Allocation	778,000,000

2. *Reserves.*

a. *State Office Reserve.* State Directors must maintain an adequate reserve to fund the following applications:

(i) Hardship and homeless applicants based upon historical data and projected demand. This shall include the direct section 502 loan and section 504 loan and grant programs.

(ii) The State's 25 percent portion of funds for Mutual Self-Help loans.

(iii) Subsequent loans for essential improvements or repairs and transfers with assumptions.

(iv) Financing for the purchase of program REOs when credit sale authority has been exhausted.

(v) State Directors must ensure that not less than 25 percent of the initial low-income allocation and 5 percent of the initial very low-income allocation are utilized for participation in leveraging section 502 direct loan funds.

(vi) Areas targeted by the State.

b. *National Office Reserves.*

(i) *General Reserve.* The National office has a general reserve of $96.5 million. Of this amount, the Administrator's reserve is $30 million. One of the purposes of the Administrator's reserve will be for loans in Indian Country. Indian Country is defined as land inside the boundaries of Indian reservations, communities made up mainly of Native Americans, Indian trust and restricted land, and tribal allotted lands. The remaining reserves will be distributed as follows:

(ii) *Hardship and Homelessness Reserve.* $3.5 million has been set aside for hardships and homeless.

(iii) *Homeownership Partnership.* $25 million has been set aside for Homeownership Partnerships. These funds will be used to expand existing partnerships and create new partnerships, such as the following:

(A) *Department of the Treasury, Community Development Financial Institutions (CDFI)*—Funds will be available to fund leveraged loans made in partnership with the Department of the Treasury CDFI participants.

(B) *Rural Home Loan Partnership (RHLP).* Partnership initiatives established to carry out the objectives of the National Partners in Homeownership including the RHLP and other strategies or initiatives.

(iv) *Rural Housing Demonstration Program.* $3 million has been set aside for innovative demonstration initiatives.

c. *Designated Reserve for Self-Help.* $110 million has been set aside for matching funds to assist participating Self-Help applicants. The matching funds were established on the basis of the National office contributing 75 percent from the National office reserve and States contributing 25 percent of their allocated section 502 RH funds.

d. *Underserved Counties and Colonias.* $55,000,000 has been set aside for the 100 underserved counties and colonias.

e. *Empowerment Zone (EZ) and Enterprise Community (EC) Earmark.* These funds are earmarked until June 30, 2000 for loans in EZ, EC or REAP Zones. Further information will follow.

f. *Reserve Requests.* All National office reserve requests should be submitted by the State Director to the National office on a case-by-case basis.

g. *State Office Pooling.* If pooling is conducted within a State, it must not take place within the first 30 calendar days of the first, second, or third quarter. (There are no restrictions on pooling in the fourth quarter.)

h. *Suballocation by the State Director.* The State Director may suballocate to each area office using the methodology and formulas required by 7 CFR part 1940, subpart L. If suballocated to the area level, the Rural Development Manager will make funds available on a first-come, first-served basis to all offices at the field or area level. No field office will have its access to funds restricted without the prior written approval of the Administrator.

C. Section 504 Housing Loans and Grants

Section 504 grant funds are included in the Rural Housing Assistance Grant program (RHAG) in the FY 2000 appropriation.

1. *Amount available for allocation.*

Section 504 Loans:	
Total Available	$32,395,287
Less 5% for 100 Underserved Counties and Colonias	1,620,000
EZ, EC or REAP Zone Earmark	7,000,000
Less General Reserve	1,500,000
Basic Formula—Administrative Allocation	22,276,000
Section 504 Grants:	
Total Available	25,650,573
Less 5% for 100 Underserved Counties and Colonias	1,250,000
Less EZ, EC or REAP Earmark	600,000
Less General Reserve	1,500,000
Basic Formula—Administrative Allocation	21,650,000

2. *Reserves and Set-asides.*

a. *State Office Reserve.* State Directors must maintain an adequate reserve to handle all anticipated hardship applicants based upon historical data and projected demand.

b. *Underserved Counties and Colonias.* $1,620,000 and $1,250,000, respectively, have been set aside for the 100 underserved counties and colonias until June 30, 2000 for the section 504 loan and grant programs.

c. *Empowerment Zone (EZ) and Enterprise Community (EC) Earmark (Loan Funds Only).* $7 million and $600,000, respectively, have been earmarked until June 30, 2000 for EZ, EC or REAPs for the section 504 loan and grant programs.

d. *National Office Reserve.* $1.5 million for section 504 loan hardships and $1.5 million for section 504 grant extreme hardships have been set-aside in the general reserve. For section 504 grants, an extreme hardship case is one requiring a significant priority in funding, ahead of other requests, due to severe health or safety hazards, or physical needs of the applicant.

Information on basic formula criteria, data source and weight, administrative allocation, pooling of funds, and availability of the allocation:

Number and description	Section 502 Nonsubsidized guaranteed RH loans	Section 502 Direct RH loans	Section 504 Loans and grants
1. Basic formula criteria, data source, and weight.	See 7 CFR 1940.563(b)	See 7 CFR 1940.565(b)	See 7 CFR 1940.566(b) and 1940.567(b).
2. Administrative allocation: Western Pacific Area.	$1,000,000	$1,000,000	$1,000,000 Loan. $500,000 Grant.
3. Pooling of funds:			
a. Mid year pooling	If Necessary	None Anticipated	None Anticipated.
b. Year-end pooling	July 14, 2000	August 18, 2000	August 18, 2000.
c. Underserved Counties & Colonias.	N/A	June 30, 2000	June 30, 2000.
d. EZ & EC	N/A	June 30, 2000	June 30, 2000.
e. Credit Sales	N/A	June 30, 2000	N/A.
4. Availability of the allocation:			
a. first quarter	50 percent	50 percent	50 percent.
b. second quarter	75 percent	70 percent	70 percent.
c. third quarter allocation	100 percent	90 percent	90 percent.
a. first quarter	50 percent	50 percent	50 percent.
b. second quarter	75 percent	70 percent	70 percent.
c. third quarter	100 percent	90 percent	90 percent.
d. fourth quarter	N/A	100 percent	100 percent.

1. Data derived from the 1990 U.S. Census was provided to each State by the National office on August 12, 1993.

2. Due to the absence of census data.

3. All dates are tentative and are as of close of business (COB). Pooled funds will be placed in the National office reserve and made available administratively.

4. Funds will be distributed cumulatively through each quarter until the year-end pooling date.

Dated: December 10, 1999.

Eileen M. Fitzgerald,

Acting Administrator, Rural Housing Service.

RURAL HOUSING SERVICE FY2000 MULTI-FAMILY HOUSING, SECTION 533, HOUSING PRESERVATION GRANT

State	Formula factor	Total allocation
AL	0.02957	$129,083
AK	0.00587	25,625
AZ	0.01780	77,703
AR	0.02310	100,839
CA	0.04653	203,119
CO	0.00840	36,669
DE	0.00190	8,294

RURAL HOUSING SERVICE FY2000 MULTI-FAMILY HOUSING, SECTION 533, HOUSING PRESERVATION GRANT—Continued

State	Formula factor	Total allocation
MD	0.00880	38,415
FL	0.02890	126,158
GA	0.03867	168,808
HI	0.00790	34,486
WPA	0.00647	28,244
ID	0.00743	32,435
IL	0.02250	98,220
IN	0.02157	94,160
IA	0.01340	58,496
KS	0.01130	49,328
KY	0.03483	152,045
LA	0.03170	138,381
ME	0.00913	39,856
MA	0.00793	34,617
CT	0.00453	19,776
RI	0.00100	4,365
MI	0.02977	129,956
MN	0.01673	73,032
MS	0.03180	138,818
MO	0.02460	107,387
MT	0.00620	27,065
NE	0.00713	31,125
NV	0.00263	11,481
NJ	0.00657	28,680
NM	0.01437	62,730
NY	0.02753	120,178
NC	0.04497	196,310
ND	0.00413	18,029
OH	0.03450	150,604
OK	0.01917	83,684
OR	0.01423	62,119
PA	0.03687	160,950
PR	0.04923	214,906
SC	0.02690	117,428
SD	0.00597	26,061
TN	0.02973	129,782
TX	0.07645	333,731
UT	0.00430	18,771
VT	0.00403	17,592
NH	0.00503	21,958
VI	0.00273	11,917
VA	0.02660	116,118
WA	0.01743	76,088
WV	0.01937	84,557
WI	0.01873	81,763
WY	0.00307	13,402
DISTR	1.00000	4,365,344
N/O RES		550,000
EZ/EC/REAP		600,000
TTL AVAIL		5,515,344

RURAL HOUSING SERVICE FISCAL YEAR 2000 ALLOCATION IN THOUSANDS, SECTION 502, DIRECT RURAL HOUSING LOANS

States	State basic formula factor	Total FY 2000 allocation
Alabama	0.0267275	$20,767
Alaska	0.0055160	4,286
Arizona	0.0145422	11,299
Arkansas	0.0208104	16,170
California	0.0454819	35,339
Colorado	0.0091766	7,130
Delaware	0.0024571	1,909
Maryland	0.0115334	8,961
Florida	0.0312406	24,274
Virgin Islands	0.0020058	1,559
Georgia	0.0374586	29,105

RURAL HOUSING SERVICE FISCAL YEAR 2000 ALLOCATION IN THOUSANDS, SECTION 502, DIRECT RURAL HOUSING LOANS—Continued

States	State basic formula factor	Total FY 2000 allocation
Hawaii	0.0067195	5,221
W Pac Islands	N/A	1,000
Idaho	0.0076722	5,961
Illinois	0.0266774	20,728
Indiana	0.0270785	21,040
Iowa	0.0163474	12,702
Kansas	0.0127369	9,897
Kentucky	0.0288838	22,443
Louisiana	0.0246715	19,170
Maine	0.0108314	8,416
Massachusetts	0.0109818	8,533
Connecticut	0.0066693	5,182
Rhode Island	0.0015545	1,208
Michigan	0.0353525	27,469
Minnesota	0.0199077	15,468
Mississippi	0.0250226	19,443
Missouri	0.0252733	19,637
Montana	0.0063685	4,948
Nebraska	0.0086752	6,741
Nevada	0.0028583	2,221
New Jersey	0.0097784	7,598
New Mexico	0.0110320	8,572
New York	0.0359041	27,898
North Carolina	0.0484405	37,638
North Dakota	0.0045131	3,507
Ohio	0.0390131	30,313
Oklahoma	0.0174005	13,520
Oregon	0.0154949	12,040
Pennsylvania	0.0467857	36,352
Puerto Rico	0.0239695	18,624
South Carolina	0.0258249	20,066
South Dakota	0.0062682	4,870
Tennessee	0.0291846	22,676
Texas	0.0660415	51,314
Utah	0.0040618	3,156
Vermont	0.0052653	4,091
New Hampshire	0.0072711	5,650
Virginia	0.0289841	22,521
Washington	0.0187042	14,533
West Virginia	0.0175008	13,598
Wisconsin	0.0237188	18,429
Wyoming	0.0036105	2,805
State Totals	1.0000000	778,000
General Reserve	.....	96,500
EZ/EC/Reap Earmark	.....	60,500
100 Underserved Counties/Colonias	.....	55,000
Self Help	.....	110,000
Total	.....	1,100,000

RURAL HOUSING SERVICE FISCAL YEAR 2000 ALLOCATION IN THOUSANDS, SECTION 502, DIRECT RURAL HOUSING LOANS

States	Total FY 2000 allocation	Very low-income allocation 40 percent	Low-income allocation 60 percent
Alabama	$20,767	$8,307	$12,460
Alaska	4,286	1,714	2,572
Arizona	11,299	4,520	6,780
Arkansas	16,170	6,468	9,702
California	35,339	14,136	21,204
Colorado	7,130	2,852	4,278
Delaware	1,909	764	1,146
Maryland	8,961	3,585	5,377
Florida	24,274	9,710	14,564
Virgin Islands	1,559	623	935
Georgia	29,105	11,642	17,463

RURAL HOUSING SERVICE FISCAL YEAR 2000 ALLOCATION IN THOUSANDS, SECTION 502, DIRECT RURAL HOUSING LOANS—Continued

States	Total FY 2000 allocation	Very low-income allocation 40 percent	Low-income allocation 60 percent
Hawaii	5,221	2,088	3,133
W Pac Islands	1,000	400	600
Idaho	5,961	2,385	3,577
Illinois	20,728	8,291	12,437
Indiana	21,040	8,416	12,624
Iowa	12,702	5,081	7,621
Kansas	9,897	3,959	5,938
Kentucky	22,443	8,977	13,466
Louisiana	19,170	7,668	11,502
Maine	8,416	3,366	5,050
Masschusetts	8,533	3,413	5,120
Connecticut	5,182	2,073	3,109
Rhode Island	1,208	483	725
Michigan	27,469	10,988	16,481
Minnesota	15,468	6,187	9,281
Mississippi	19,443	7,777	11,666
Missouri	19,637	7,855	11,782
Montana	4,948	1,979	2,969
Nebraska	6,741	2,696	4,044
Nevada	2,221	888	1,333
New Jersey	7,598	3,039	4,559
New Mexico	8,572	3,429	5,143
New York	27,898	11,159	16,739
North Carolina	37,638	15,055	22,583
North Dakota	3,507	1,403	2,104
Ohio	30,313	12,125	18,188
Oklahoma	13,520	5,408	8,112
Oregon	12,040	4,816	7,224
Pennsylvania	36,352	14,541	21,811
Puerto Rico	18,624	7,450	11,175
South Carolina	20,066	8,026	12,040
South Dakota	4,870	1,948	2,922
Tennessee	22,676	9,071	13,606
Texas	51,314	20,526	30,789
Utah	3,156	1,262	1,894
Vermont	4,091	1,636	2,455
New Hampshire	5,650	2,260	3,390
Virginia	22,521	9,008	13,512
Washington	14,533	5,813	8,720
West Virginia	13,598	5,439	8,159
Wisconsin	18,429	7,372	11,058
Wyoming	2,805	1,122	1,683
State Totals	778,000	311,200	466,800
General Reserve	96,500	44,100	52,400
100 Counties/Colonias	55,000	33,000	22,000
EZ/EC/Reap Earmark	60,500	36,300	24,200
Self Help	110,000	59,400	50,600
Total	1,100,000	484,000	616,000

RURAL HOUSING SERVICE FISCAL YEAR 2000 ALLOCATION IN THOUSANDS, SECTION 502, GUARANTEED LOANS (NONSUBSIDIZED)

States	State basic formula factor	Total FY 2000 allocation
Alabama	0.0253847	$58,360
Alaska	0.0061561	14,153
Arizona	0.0155290	35,701
Arkansas	0.0213661	49,121
California	0.0524861	120,666
Colorado	0.0100701	23,151
Delaware	0.0024043	5,527
Maryland	0.0104750	24,082
Florida	0.0308357	70,891
Virgin Islands	0.0027236	6,262

RURAL HOUSING SERVICE FISCAL YEAR 2000 ALLOCATION IN THOUSANDS, SECTION 502, GUARANTEED LOANS (NONSUBSIDIZED)—Continued

States	State basic formula factor	Total FY 2000 allocation
Georgia	0.0385293	88,579
Hawaii	0.0083323	19,156
W Pac Islands	N/A	1,000
Idaho	0.0077774	17,880
Illinois	0.0256395	58,945
Indiana	0.0236023	54,261
Iowa	0.0151422	34,812
Kansas	0.0123032	28,285
Kentucky	0.0286790	65,933
Louisiana	0.0256223	58,906
Maine	0.0113916	26,189
Massachusetts	0.0117468	27,006
Connecticut	0.0065708	15,106
Rhode Island	0.0017216	3,958
Michigan	0.0337181	77,518
Minnesota	0.0184738	42,471
Mississippi	0.0259670	59,698
Missouri	0.0253687	58,323
Montana	0.0067138	15,435
Nebraska	0.0083216	19,131
Nevada	0.0029735	6,836
New Jersey	0.0091825	21,111
New Mexico	0.0117200	26,944
New York	0.0369739	85,003
North Carolina	0.0471742	108,453
North Dakota	0.0040847	9,391
Ohio	0.0378081	86,921
Oklahoma	0.0175713	40,396
Oregon	0.0166212	38,212
Pennsylvania	0.0438367	100,781
Puerto Rico	0.0250931	57,689
South Carolina	0.0249510	57,362
South Dakota	0.0065435	15,043
Tennessee	0.0276859	63,650
Texas	0.0665018	152,888
Utah	0.0039861	9,164
Vermont	0.0057475	13,214
New Hampshire	0.0075234	17,296
Virginia	0.0278404	64,005
Washington	0.0200905	46,188
West Virginia	0.0172518	39,662
Wisconsin	0.0222867	51,237
Wyoming	0.0035006	8,048
State Totals	1.0000000	2,300,000
General Reserve	.....	630,000
Special Outreach Areas Reserve	.....	270,000
Total	.....	3,200,000

RURAL HOUSING SERVICE FISCAL YEAR 2000 ALLOCTION IN THOUSANDS, SECTION 504, RURAL HOUSING LOANS

States	State basic formula factor	Total FY 2000 allocation
Alabama	0.0300207	$612
Alaska	0.0082816	169
Arizona	0.0207039	422
Arkansas	0.0232919	475
California	0.0548654	1,118
Colorado	0.0087992	179
Delaware	N/A	100
Maryland	0.0098344	200
Florida	0.0305383	622
Virgin Islands	N/A	100
Georgia	0.0408903	833
Hawaii	0.0103520	211
W Pac Islands	N/A	1,000
Idaho	0.0077640	158

RURAL HOUSING SERVICE FISCAL YEAR 2000 ALLOCTION IN THOUSANDS, SECTION 504, RURAL HOUSING LOANS—Continued

States	State basic formula factor	Total FY 2000 allocation
Illinois	0.0232919	475
Indiana	0.0227743	464
Iowa	0.0134576	274
Kansas	0.0119048	243
Kentucky	0.0331263	675
Louisiana	0.0305383	622
Maine	0.0103520	211
Massachusetts	0.0082816	169
Connecticut	N/A	100
Rhode Island	N/A	100
Michigan	0.0300207	612
Minnesota	0.0181159	369
Mississippi	0.0310559	633
Missouri	0.0248447	506
Montana	0.0062112	127
Nebraska	0.0072464	148
Nevada	N/A	100
New Jersey	0.0072464	148
New Mexico	0.0155280	316
New York	0.0295031	601
North Carolina	0.0491718	1,002
North Dakota	N/A	100
Ohio	0.0341615	696
Oklahoma	0.0181159	369
Oregon	0.0155280	316
Pennsylvania	0.0383023	780
Puerto Rico	0.0351967	717
South Carolina	0.0289855	591
South Dakota	0.0062112	127
Tennessee	0.0305383	622
Texas	0.0807453	1,645
Utah	N/A	100
Vermont	N/A	100
New Hampshire	0.0056936	116
Virginia	0.0305383	622
Washington	0.0191511	390
West Virginia	0.0186335	380
Wisconsin	0.0201863	411
Wyoming	N/A	100
State Totals	1.0000000	22,275
General Reserve	.....	1,500
EZ/EC/Reap Earmark	.....	7,000
100 Underserved Counties/Colonias	.....	1,620
Total	.....	32,395

RURAL HOUSING SERVICE FISCAL YEAR 2000 ALLOCATION IN THOUSANDS, SECTION 504, RURAL HOUSING GRANTS

States	State basic formula factor	Total FY 2000 allocation
Alabama	0.0288363	$605
Alaska	0.0058359	122
Arizona	0.0175007	367
Arkansas	0.0230003	482
California	0.0494336	1,037
Colorado	0.0085822	180
Delaware	N/A	100
Maryland	0.0102987	216
Florida	0.0350154	734
Virgin Islands	N/A	100
Georgia	0.0377618	792
Hawaii	0.0078957	166
W Pac Islands	N/A	500
Idaho	0.0075524	158
Illinois	0.0271198	569
Indiana	0.0250601	525
Iowa	0.0168211	353

RURAL HOUSING SERVICE FISCAL YEAR 2000 ALLOCATION IN THOUSANDS, SECTION 504, RURAL HOUSING GRANTS—Continued

States	State basic formula factor	Total FY 2000 allocation
Kansas	0.0137315	288
Kentucky	0.0305527	641
Louisiana	0.0267765	561
Maine	0.0106419	223
Massachusetts	0.0099554	209
Connecticut	0.0054926	115
Rhode Island	N/A	100
Michigan	0.0326124	684
Minnesota	0.0202540	425
Mississippi	0.0278064	583
Missouri	0.0264332	554
Montana	0.0061792	130
Nebraska	0.0089255	187
Nevada	N/A	100
New Jersey	0.0085822	180
New Mexico	0.0127017	266
New York	0.0332990	698
North Carolina	0.0484037	1,015
North Dakota	N/A	100
Ohio	0.0370752	777
Oklahoma	0.0188809	396
Oregon	0.0161346	338
Pennsylvania	0.0449708	943
Puerto Rico	0.0271199	569
South Carolina	0.0267765	561
South Dakota	0.0065225	137
Tennessee	0.0302094	633
Texas	0.0734638	1,540
Utah	N/A	100
Vermont	N/A	100
New Hampshire	0.0061792	130
Virginia	0.0291795	612
Washington	0.0188809	396
West Virginia	0.0185376	389
Wisconsin	0.0230003	482
Wyoming	N/A	100
State Totals	1.000000	22,267
General Reserve		1,500
EZ/EC/Reap Earmark		600
100 Underserved Counties/Colonias		1,283
Total		25,650

[FR Doc. 99–32957 Filed 12–20–99; 8:45 am]
BILLING CODE 3410–XV–U

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Availability of Funding and Requests for Proposals for Guaranteed Loans Under the Section 538 Guaranteed Rural Rental Housing Program

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: This Notice of Fund Availability (NOFA or Notice) announces the timeframe to submit proposals in the form of ''NOFA responses'' for the section 538 Guaranteed Rural Rental Housing Program (GRRHP). Eligible lenders are invited to submit NOFA proposals for the development of affordable rental housing to serve rural America. Lenders may submit their application concurrently with their NOFA response. This document also describes the overall application process, including the selection of NOFA responses and the allocation of interest credits.

DATES: Fiscal Year (FY) 2000 program dollars will be divided into two selection pools: an ''early selection pool'' of $40 million which will close at 4:00 PM Eastern Time on February 21, 2000 and the ''standard selection pool'' of $60 million which will close at 4:00 PM Eastern Time, on May 8, 2000. See paragraph III., ''Application Process'' of this NOFA for more information on this topic.

The final deadline for a FY 2000 NOFA response will be 4:00 PM Eastern Time on May 8, 2000. No NOFA responses will be accepted after 4:00 PM Eastern Time on May 8, 2000, unless that date and time is extended by Notice published in the **Federal Register**. Lenders intending to mail a NOFA response must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX) and postage due NOFA responses or applications will not be accepted.

ADDRESSES: Responses for participation in the program must be identified as ''Section 538 Guaranteed Rural Rental Housing Program'' on the envelope and

be submitted to: Director, Multi-Family Housing Processing Division, Rural Housing Service, U.S. Department of Agriculture, Room 1263 (STOP 0781), 1400 Independence Ave. SW, Washington, DC 20250–0781.

FOR FURTHER INFORMATION CONTACT: Joyce Allen, Senior Loan Officer, Guaranteed Loans, Multi-Family Housing Processing Division, U.S. Department of Agriculture, South Agriculture Building, Room 1271 (STOP 0781), 1400 Independence Ave. SW, Washington, DC 20250–0781. E-mail: jallen@rdmail.rural.usda.gov. Telephone: (202) 690–4499. This number is not toll-free. Hearing or speech impaired persons may access that number by calling the Federal Information Relay Service toll-free at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The GRRHP will be operated under the direction of Title 7 CFR Code of Federal Regulations part 3565 (7 CFR part 3565). In addition, this NOFA will identify any priorities for selection of proposed applications, and the process by which the Agency will score and rank the proposals. Information will also be included about submission forms and deadlines.

The Guaranteed Rural Rental Housing Program Origination and Servicing Handbook (HB–1–3565) is available to provide lenders and Agency personnel with the ''how to'' administrative guidance needed to administer the program. As a service to our customers, copies of HB–1–3565, which contains a copy of 7 CFR part 3565 in Appendix 1, may be obtained from the Rural Housing Service Multi-Family Housing Processing Division at 202–720–1604. This is not a toll-free number. Hearing- or speech-impaired persons may access that number by calling the Federal Information Relay Service toll-free at (800) 877–8339.

Discussion of Notice

I. Purpose and Program Summary

On March 28, 1996, President Clinton signed the ''Housing Opportunity Program Extension Act of 1996,'' Public Law 104–120, authorizing the section 538 Guaranteed Rural Rental Housing Program (GRRHP). The program is designed to increase the supply of affordable multifamily housing through partnerships between Rural Housing Service (RHS) and major lending sources, as well as State and local housing finance agencies and bond issuers. Qualified lenders will be authorized to originate, underwrite, and close loans for multifamily housing projects requiring new construction or acquisition with rehabilitation of at least $15,000 per unit. RHS may guarantee such loans upon presentation and review of appropriate certifications, project information and satisfactory completion of the appropriate level of environmental review by RHS. Lenders will be responsible for the full range of loan management, servicing, and property disposition activities associated with these projects. The lender will be expected to provide servicing or contract for servicing of each loan it underwrites. In turn, RHS will guarantee the lender's loan up to 90 percent of total development cost and commits to pay up to a maximum of 90 percent of the outstanding principal and interest balance of such loan in the case of default of the loan and filing of a claim. In no event will the Agency pay more than 90 percent of the original principal amount. This means that the Agency will have a risk exposure under the GRRHP of approximately 80 percent of the total development cost. Any losses would be split on a pro-rata basis between the lender and the Agency from the first dollar lost.

II. Allocation

Fiscal Year (FY) 2000 budget authority provides approximately $100 million in program dollars. All FY 2000 funds will be held in the National office. There are no set-asides or demonstration purposes for the GRRHP for FY 2000.

III. Application Process

FY 2000 budget authority will provide approximately $100 million in program dollars. In order to better assist lenders who are currently working with an applicant, the FY 2000 program dollars will be divided into two selection pools; an ''early selection pool'' of $40 million, which will close 4 p.m. Eastern Standard Time, February 21, 2000 and a ''standard selection pool'' of $60 million, which will close 4 p.m. Eastern Daylight Time, May 8, 2000. Any funds not used in the early selection pool will be transferred to the standard selection pool.

To be eligible for early selection, NOFA responses must have a minimum score of 20 points and must be received prior to 4:00 PM, Eastern Standard Time on February 21, 2000. NOFA responses not scoring a minimum of 20 points, responses received after the deadline for the early pool, and responses not selected due to insufficient funds in this pool will be retained for the standard selection pool with the closing deadline of May 8, 2000. The final deadline for a FY 2000 NOFA response will be 4 p.m., Eastern Daylight Time on May 8, 2000. No exceptions will be made to the above NOFA closing deadlines unless those deadlines are extended by notice published in the **Federal Register**.

In the event that there are insufficient funds available in either selection pool, priorities will be assigned to the NOFA responses on the basis of the criteria assigned in 7 CFR 3565.5(b) and in paragraph VI., ''Selection Criteria'' of this NOFA. In the event that there are insufficient funds available to fully fund the next NOFA proposal in the ranking list, the Agency will offer the lender the opportunity to accept a loan note guarantee for less than the requested amount. If the lender declines, the same offer will be made to the next lender on the ranking list, until all the funds are expended. In the event of ties, selection will be by lot.

In the interest of time, lenders have the option of submitting a combined NOFA response and application. However, the Agency will not give preference to a submission with both the NOFA response and application. Lenders who submit complete applications are encouraged, but not required, to include a checklist and to have their applications indexed and tabbed to facilitate the review process. RHS will base its determination of the completeness of the application and the eligibility of the lender on the information provided in the application.

Upon notice of selection, lenders with the top ranked NOFA responses will be requested to submit the required application fee of $2,500.00 and full application if not already submitted. When the conditions of the conditional commitment are met, the lender will submit the required information with a separate guarantee fee of 1% of the total guarantee amount.

IV. Submission Requirements

All NOFA responses for the GRRHP must meet the requirements of 7 CFR part 3565 and this NOFA. Incomplete submissions will not be considered, and the lender will be notified of the reason the response was incomplete.

Assistance can include both loan guarantees and interest credits. For at least 20 percent of the loans made under the program, RHS shall provide the borrower with interest credits to reduce the interest rate of the loan by a maximum of 250 basis points. However, in no instance will the lender's interest rate be reduced to lower than the applicable Federal Rate as such term is used in section 42(i)(2)(D) of the Internal Revenue Code of 1986.

RHS will provide interest credit on loans up to $1.5 million. Lenders with proposals that could be viable with or without interest credits are encouraged

to submit a NOFA response reflecting financial and market feasibility under both funding options. A request in the NOFA response to be considered under both options will not affect the rating of the response for Interest Credit selection. However, once the interest credit funds are exhausted, only those NOFA responses requesting consideration under both funding options or the Non-Interest Credit option will be further considered.

NOFA responses requesting interest credit will be ranked and scored separately using the same selection criteria for non-interest credit responses. In the event that there are insufficient funds available to fully fund the next interest credit response in the ranking list, the Agency will offer the lender the opportunity to accept a loan note guarantee for less than the requested amount. If the lender declines, the same offer will be made to the next rated response on the list until all the funds are expended. In the event of ties, selection will be by lot.

V. Sample NOFA Response

In order to expedite the review of the applications, RHS suggests using the following NOFA response guidelines. The NOFA response should be on the lender's letterhead, signed by both the lender and the applicant, and be submitted by the lender to the Agency.

Sample NOFA Response:

LENDER NAME—Lender organization name.

LENDER CONTACT NAME—Name of the lender contact for loan.

MAILING ADDRESS—Complete mailing address for lender.

PHONE NUMBER—Phone number for lender contact.

FAX NUMBER—Fax number.

E-MAIL ADDRESS—E-mail address.

APPLICANT NAME—Show official name, list any trade name as ''d/b/a.''

APPLICANT TAX ID NUMBER—Insert number.

NEW CONSTRUCTION OR REPAIR/REHAB. OF AT LEAST $15,000/UNIT.—State whether the project is new construction or repair/rehab.

PROJECT LOCATION TOWN—Town in which the project is located.

PROJECT COUNTY—County in which the project is located.

PROJECT STATE—State in which the project is located.

PROJECT ZIP CODE—Project zip code.

PROJECT CONGRESSIONAL DISTRICT—Congressional District for project location.

EZ/EC—Is the project in EZ/EC community? (Yes or No)

COLONIA OR TRIBAL LANDS—Is the project in a Colonia or on tribal lands? (Yes or No)

PRESIDENTIAL DECLARED DISASTER AREA—Is the project in a Presidentially declared Disaster Area? (Yes or No)

POPULATION—What is the population of the community in which the project is located? (Note: Population must be in an eligible rural area as defined in HB–1–3565, paragraph 1.6, ''Eligible Rural Area.'')

MEDIAN INCOME FOR COMMUNITY—Provide median income for the project community.

LOAN AMOUNT—Insert the loan amount.

PERCENTAGE OF GUARANTEE—Percentage guarantee requested.

IS A GUARANTEE FOR CONSTRUCTION ADVANCES BEING REQUESTED?—(Yes or No) (**Note:** Agency will guarantee construction advances, only as part of a combination construction and permanent loan.)

TOTAL PROJECT DEVELOPMENT COST—Enter amount for total project.

TAX CREDITS—Are tax credits to be provided to project?

LOAN TERM—Provide the loan term. (**Note:** Term may be up to 40 years.)

INTEREST RATE—Provide the interest rate. (**Note:** Max. rate is 250 basis points over treasury bond yield. Rate must be fixed rate and fully amortizing, *i.e.*, balloon mortgages are not eligible.)

BASIS POINTS OVER 30 YEAR TREASURY—Insert number.

OTHER SOURCES OF FUNDS—List all funding sources.

NUMBER OF UNITS—What is the total number of units in the project?

BEDROOM MIX—Number of units by number of bedrooms.

INTEREST CREDIT (IC)—Is interest credit requested for this loan (Yes or No)?

IF ABOVE IS ''YES,'' SHOULD PROPOSAL BE CONSIDERED UNDER NON–IC SELECTION, IF IC FUNDS ARE EXHAUSTED?—(Yes or No) (**Note:** If ''Yes,'' proposal must show financial feasibility for NON–IC consideration.)

RENT—What is the proposed rent structure?

COST PER UNIT—Total development cost divided by number of units.

DEBT COVERAGE RATIO—Net Operating Income divided by debt payments.

LOAN TO VALUE—Guarantee loan divided by value.

VI. Selection Criteria

NOFA proposals will be reviewed as received. In the event that demand exceeds available funds, priorities will be assigned to eligible proposals on the basis of the following criteria as described in 7 CFR 3565.5(b), and points will be assigned as follows:

(A) Projects located in rural communities with the smallest population will receive priority. All proposals will be ranked in order of their population. The proposals will be given a point score starting with the project located in the area with the lowest population receiving 20 points, the next 19 points and so forth, until up to 20 projects have received points.

(B) The most needy communities as determined by the median income from the most recently available census data. The proposals will be given a point score starting with the community having the lowest median income receiving 20 points, the next 19 points and so forth until up to 20 proposals have received points.

(C) Partnering and leveraging in order to develop the maximum number of housing units and promote partnerships with state and local communities, including other partners with similar housing goals. Leveraging points will be awarded as follows:

Loan to value ratio (percentage %)	Points
75–84	10
70–74	15
69 or less	20

(D) Loans with interest rates less than the maximum allowable 250 basis points over the 30 Year Treasury Rate will be awarded points as follows:

Interest rate	Points
250 to 201 basis points, inclusive	0
200 to 151 basis points, inclusive	5
150 to 100 basis points, inclusive	10
99 to 50 basis points, inclusive	15
Less than 50 basis points	20

(E) Preference will be given to proposals having a higher percent of 3–5 bedroom units to total units. The proposals will be ranked in order of this percent with the proposal with the highest percent receiving 20 points, the next 19 points and so forth until up to 20 projects have received points.

(F) Proposals to be developed in a colonia, on tribal land, in an Empowerment Zone or Enterprise Community, or in a place identified in the State consolidated plan or State needs assessment as a high need community for multifamily housing (20 points).

(G) Projects will be ranked by the length of the amortization period, with the longest receiving priority as follows:

Amortization (Yrs.)	Points
40	20
At least 35	15
At least 30	10
At least 20	5
Less than 20	0

VII. Additional Information

A. National Environmental Policy Act (NEPA)

The lender will provide the applicant's completed Form RD 1940–20, ''Request for Environmental Information,'' available by contacting the Rural Development State Environmental Coordinator (SEC) at any RD State office and submit it with the NOFA response. A description of any known environmental issues that may affect the project must also be included. This step is necessary in order for the NOFA response to be complete.

The Agency's environmental review of the property, as required under NEPA and 7 CFR part 1940, subpart G will be initiated as early as possible, but no later than the selection of the proposal for further processing. This environmental impact review must be completed prior to the Agency's issuance of a conditional commitment. The environmental review is considered complete when the environmental documents have been properly executed, when all applicable public notices have been published, the associated public comment periods have expired, and the Agency has taken any necessary actions to address the comments received.

Lenders have a responsibility to become familiar with Federal environmental requirements so that they can advise applicants and reduce the probability of unacceptable NOFA responses being submitted to the Agency. Lenders are also expected to cooperate in the collection of any environmental data which the Agency determines is necessary and in the resolution of potential environmental problems.

B. Surcharges for Guarantee of Construction Advances

There is no surcharge for guarantee of construction advances for FY 2000.

C. Maximum Interest Rate

The maximum allowable interest rate on a loan submitted for a guarantee is 250 basis points over the 30-year Treasury Bond Yield as published in the Wall Street Journal as of the business day prior to the business day the rate is set.

D. Program Fees for FY 2000

(1) There is an initial guarantee fee of 1% of the total guarantee amount which will be due when the loan guarantee is issued. For purposes of calculating this fee, the guarantee amount is the product of the percentage of the guarantee times the initial principal amount of the guaranteed loan.

(2) There is an annual renewal fee of 0.5% of the guaranteed outstanding principal balance charged each year or portion of the year that the guarantee is in effect. This fee will be collected prospectively on January 1, of the calendar year.

(3) There is no site assessment and market analysis or preliminary feasibility fee in FY 2000.

(4) There is a non-refundable application fee of $2,500 when the application is submitted following proposal selection under the NOFA.

(5) There is no lender application fee for lender approval in FY 2000.

(6) There is a flat fee of $500 when a lender requests RHS to extend the term of a guarantee commitment.

(7) There is a flat fee of $500 when a lender requests RHS to reopen a guarantee commitment after the period of the commitment lapses.

(8) There is a flat fee of $1,250 when a lender requests RHS to approve the transfer of property and assumption of the loan to an eligible applicant.

Dated: December 10, 1999.

Eileen M. Fitzgerald,

Acting Administrator, Rural Housing Service.

[FR Doc. 99–32958 Filed 12–20–99; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability (NOFA) for the section 515 Rural Rental Housing Program for Fiscal Year 2000

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Notice.

SUMMARY: This NOFA announces the timeframe to submit applications for section 515 Rural Rental Housing (RRH) loan funds and section 521 Rental Assistance (RA) for new construction, including applications for the nonprofit set-aside for eligible nonprofit entities, the set-aside for the most Underserved Counties and Colonias (Cranston-Gonzalez National Affordable Housing Act), and the set-aside for Empowerment Zones and Enterprise Communities (EZ/ECs) and Rural Economic Area Partnership (REAP) communities. This document describes the methodology that will be used to distribute funds, the application process, submission requirements, and areas of special emphasis or consideration.

DATES: The closing deadline for receipt of all applications, including those for the set-asides, in response to this NOFA is 5:00 p.m., local time for each Rural Development State office on February 22, 2000. The application closing deadline is firm as to date and hour. RHS will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX) and postage due applications will not be accepted.

ADDRESSES: Applicants wishing to apply for assistance must contact the Rural Development State office serving the place in which they desire to submit an application for rural rental housing to receive further information and copies of the application package. Rural Development will date and time stamp incoming applications to evidence timely receipt, and, upon request, will provide the applicant with a written acknowledgment of receipt. A listing of Rural Development State offices, their addresses, telephone numbers, and person to contact follows:

Note: Telephone numbers listed are not toll-free.

Alabama State Office, Suite 601, Sterling Centre, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3455, TDD (334) 279–3495, James B. Harris

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 745–2176, TDD (907) 745–6494, Ron Abbott

Arizona State Office, Phoenix Corporate Center, 3003 N. Central Ave., Suite 900, Phoenix, AZ 85012–2906, (602) 280–8765, TDD (602) 280–8706, Johnna Vargas

Arkansas State Office, 700 W. Capitol Ave., Rm. 3416, Little Rock, AR 72201–3225, (501) 301–3250, TDD (501) 301–3279, Cathy Jones

California State Office, 430 G Street, Agency 4169, Davis, CA 95616–4169, (530) 792–5819, TDD (530) 792–5848, Millie Manzanedo

Colorado State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, (303) 236–2801 (ext. 122), TDD (303) 236–1590, ''Sam'' Mitchell

Connecticut
Served by Massachusetts State Office

Delaware and Maryland State Office, 5201 South Dupont Highway, PO Box 400, Camden, DE 19934–9998, (302) 697–4353, TDD (302) 697–4303, Pat Baker

Florida & Virgin Islands State Office, 4440 N.W. 25th Place, PO Box 147010, Gainesville, FL 32614–7010, (352) 338–3465, TDD (352) 338–3499, Joseph P. Fritz

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2164, TDD (706) 546–2034, Wayne Rogers

Guam
Served by Hawaii State Office

Hawaii, Guam, & Western Pacific Territories State Office, Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8316, TDD (808) 933–8321, Abraham Kubo

Idaho State Office, Suite A1, 9173 West Barnes Dr., Boise, ID 83709, (208) 378–5630, TDD (208) 378–5644, Roni Atkins

Illinois State Office, Illini Plaza, Suite 103, 1817 South Neil Street, Champaign, IL 61820, (217) 398–5412 (ext. 256), TDD (217) 398–5396, Barry L. Ramsey

Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100 (ext. 423), TDD (317) 290–3343, John Young

Iowa State Office, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4493, TDD (515) 284–4858, Bruce McGuire

Kansas State Office, 1200 SW Executive Drive, PO Box 4653, Topeka, KS 66604, (785) 271–2718, TDD (785) 271–2767, Gary Schumaker

Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (606) 224–2500, TDD (606) 224–7422, Paul Higgins

Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7962, TDD (318) 473–7655 Yvonne R. Emerson

Maine State Office, 444 Stillwater Ave., Suite 2, PO Box 405, Bangor, ME 04402–0405, (207) 990–9110, TDD (207) 942–7331, Dale D. Holmes

Maryland
Served by Delaware State Office

Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street, Amherst, MA 01002, (413) 253–4333, TDD (413) 253–7068, Donald Colburn

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5192, TDD (517) 337–6795, Philip Wolak

Minnesota State Office, 410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7820, TDD (651) 602–3799, Jackie Goodnough

Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4325, TDD (601) 965–5850, Danny Ivy

Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0990, TDD (573) 876–9301, Gary Frisch

Montana State Office, Unit 1, Suite B, 900 Technology Blvd., Bozeman, MT 59715, (406) 585–2515, TDD (406) 585–2562, MaryLou Affleck

Nebraska State Office, Federal Building, room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5567, TDD (402) 437–5093, Byron Fischer

Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222 (ext. 13), TDD (775) 885–0633, William L. Brewer

New Hampshire State Office, Concord Center, Suite 218, Box 317, 10 Ferry Street, Concord, NH 03301–5004, (603) 223–6046, TDD (603) 229–0536, Jim Fowler

New Jersey State Office, Tarnsfield Plaza, Suite 22, 790 Woodland Road, Mt. Holly, NJ 08060, (609) 265–3631, TDD (609) 265–3687, George Hyatt, Jr.

New Mexico State Office, 6200 Jefferson St., NE, Room 255, Albuquerque, NM 87109, (505) 761–4944, TDD (505) 761–4938, Carmen N. Lopez

New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357, Syracuse, NY 13202, (315) 477–6419, TDD (315) 477–6447, George N. Von Pless

North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2062, TDD (919) 873–2003, Eileen Nowlin

North Dakota State Office, Federal Building, Room 208, 220 East Rosser, PO Box 1737, Bismarck, ND 58502, (701) 530–2049, TDD (701) 530–2113, Kathy Lake

Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 469–5165, TDD (614) 469–5757, Gerald Arnott

Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1070, TDD (405) 742–1007, Phil Reimers

Oregon State Office, 101 SW Main, Suite 1410, Portland, OR 97204–3222, (503) 414–3325, TDD (503)414–3387, Dan Streng

Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2281, TDD (717) 237–2261, Gary Rothrock

Puerto Rico State Office, New San Juan Office Bldg., Room 501, 159 Carlos E. Chardon Street, Hato Rey, PR 00918–5481, (787) 766–5095 (ext. 254), TDD 1–800–274–1572, Lourdes Colon

Rhode Island
Served by Massachusetts State Office

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South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW, Huron, SD 57350, (605) 352–1132, TDD (605) 352–1147, Dwight Wullweber

Tennessee State Office, Suite 300, 3322 West End Avenue, Nashvile, TN 37203–1084, (615) 783–1300, TDD (615) 783–1397, G. Benson Lasater

Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9755, TDD (254) 742–9712, Eugene G. Pavlat

Utah State Office, Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84147–0350, (801) 524–4324, TDD (801) 524–3309, Robert L. Milianta

Vermont State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6028, TDD (802) 223–6365, Sandra Mercier

Virgin Islands
Served by Florida State Office

Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1582, TDD (804) 287–1753, Carlton Jarratt

Washington State Office, Suite B, 1835 Black Lake Boulevard, SW, Olympia, WA 98512–5715, (360) 704–7707, TDD (360) 704–7760, Deborah Davis

Western Pacific Territories
Served by Hawaii State Office

West Virginia State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 291–4793, TDD (304) 284–5941, Sue Snodgrass

Wisconsin State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7620 (ext. 7145), TDD (715) 345–7614, Sherry Engel

Wyoming State Office, 100 East B, Federal Building, Room 1005, PO Box 820, Casper, WY 82602, (307) 261–6315, TDD (307) 261–6333, Charles Huff

FOR FURTHER INFORMATION CONTACT: For general information, applicants may contact Linda Armour, Senior Loan Officer, Multi-Family Housing Processing Division, Rural Housing Service, United States Department of Agriculture, Stop 0781, 1400 Independence Avenue, SW, Washington, DC, 20250, telephone (202) 720–1753 (voice) (this is not a toll free number) or (800) 877–8339 (TDD-Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

Programs Affected

The Rural Rental Housing program is listed in the Catalog of Federal Domestic Assistance under Number 10.415, Rural Rental Housing Loans. Rental Assistance is listed in the Catalog under Number 10.427, Rural Rental Assistance Payments.

Explanation of 60-Day NOFA Application Deadline

The Agency is using a 60-day application period so that the NOFA process will coincide with the time constraints placed upon our customers by participating lenders and state housing finance agencies (SHFA). Participating lenders such as commercial banks leverage their funds with RHS funds. State organizations can provide Community Development Block Grants (CDBG) and HOME funds as another means of leveraging RHS funds, and SHFAs have certain timeframes whereby applicants can apply for tax credits. Therefore, to assist as many of our customers as possible in obtaining leveraged funds and to participate with

other funding sources, a 60-day application period is provided.

Discussion of Notice

I. Authority and Distribution Methodology

A. Authority

Section 515 of the Housing Act of 1949 (42 U.S.C. 1485) provides RHS with the authority to make loans to any individual, corporation, association, trust, Indian tribe, public or private nonprofit organization, consumer cooperative, or partnership to provide rental or cooperative housing and related facilities in rural areas for very-low, low, or moderate income persons or families, including elderly persons and persons with disabilities. Rental assistance (RA) is a tenant subsidy for very-low and low-income families residing in rural rental housing facilities with RHS financing and may be requested with applications for such facilities.

B. *Distribution Methodology*

The total amount available for FY 2000 for section 515 is $114,322,076, of which $49,783,694 is available for new construction as follows:

Section 515 new construction funds	$ 22,500,000
Set-aside for nonprofits	$ 10,288,987
Set-aside for Underserved Counties and Colonias	$ 5,716,104
Set-aside for EZ, EC, and REAP zones	9,778,603
State Rental Assistance (RA) designated reserve	$ 1,500,000

C. Section 515 New Construction Funds

For fiscal year 2000, the Administrator has determined that it would not be practical to allocate funds to States because of funding limitations; therefore, section 515 new construction funds will be distributed to States based on a National competition, as follows:

1. States will accept, review, score, and rank requests in accordance with 7 CFR part 1944, subpart E. The scoring factors are:

(a) The presence and extent of leveraged assistance for the units that will serve RHS income-eligible tenants at basic rents comparable to those if RHS provided full financing, computed as a percentage of the RHS total development cost (TDC). RHS TDC excludes non-RHS eligible costs such as a developer's fee. Points will be awarded in accordance with the following table. (0 to 20 points)

Percentage of leveraging	Points
75 or more	20
70–74	19
65–69	18
60–64	17
55–59	16
50–54	15
45–49	14
40–44	13
35–39	12
30–34	11
25–29	10
20–24	9
15–19	8
10–14	7
5–9	6
0–4	5

(b) The units to be developed are in a colonia, tribal land, EZ, EC, or REAP community, or in a place identified in the State Consolidated Plan or State Needs Assessment as a high need community for multifamily housing. (20 points)

(c) In states where RHS has an on-going formal working relationship, agreement, or Memorandum of Understanding (MOU) with the State to provide State resources (State funds, State RA, HOME funds, CDBG funds, or Low-Income Housing Tax Credits) for RHS proposals; or where the State provides preference or points to RHS proposals in awarding such State resources, 20 points will be provided to loan requests that include such State resources. (National office initiative)

(d) The loan request includes donated land meeting the provisions of 7 CFR 1944.215(r)(4). (5 points)

2. The National office will rank all requests nationwide and distribute funds to States in rank order, within funding and RA limits. If insufficient funds or RA remain for the next ranked proposal, the Agency will select the next ranked proposal that falls within the remaining levels.

D. Applications That Do Not Require New Construction Rental Assistance (RA)

For fiscal year 2000, limited new construction RA is available. Therefore, the Agency is inviting applications to develop units in markets that do not require RA. The market study for non-RA proposals must clearly demonstrate a need and demand for the units by prospective tenants at income levels that can support the proposed rents without tenant subsidies. The proposed units must offer amenities that are typical for the market area at rents that are comparable to conventional rents in the market for similar units.

E. Set-asides

Loan requests will be accepted for the following set-asides:

1. *Nonprofit set-aside.* An amount of $10,288,987 has been set aside for nonprofit applicants. All loan proposals must be in designated places in accordance with 7 CFR part 1944, subpart E. A State or jurisdiction may receive one proposal from this set-aside, which cannot exceed $1 million. A State could get additional funds from this set-aside if any funds remain after funding one proposal from each participating State. If there are insufficient funds to fund one loan request from each participating State, selection will be made by point score. If there are any funds remaining, they will revert to the National office reserve. Funds from this set-aside will be available only to nonprofit entities, which may include a partnership that has as its general partner a nonprofit entity or the nonprofit entity's for-profit subsidiary which will be receiving low-income housing tax credits authorized under section 42 of the Internal Revenue Code of 1986. To be eligible for this set-aside, the nonprofit entity must be an organization that:

(a) Will own an interest in the project to be financed and will materially participate in the development and the operations of the project;

(b) Is a private organization that has nonprofit, tax exempt status under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code of 1986;

(c) Has among its purposes the planning, development, or management of low-income housing or community development projects; and

(d) Is not affiliated with or controlled by a for-profit organization.

2. *Underserved counties and colonias set-aside.* An amount of $5,716,104 has been set aside for loan requests to develop units in the 100 most needy underserved counties or colonias as defined in section 509(f) of the Housing Act of 1949.

3. *EZ, EC, and REAP set-aside.* An amount of $9,778,603 has been set aside to develop units in EZ, EC, or REAP communities. Loan requests that are eligible for this set-aside may also be eligible for regular section 515 funds as a high-need community. The state must indicate on the list submitted to the National office if the request is eligible for the EZ, EC, and REAP set-aside and regular section 515 funds. If requests for this set-aside exceed available funds, selection will be made by point score.

F. Prior Year Applications

The Rural Housing Service published a final rule in the **Federal Register** (62 FR 67216) on December 23, 1997 outlining its application and review process for section 515 Rural Rental

Housing new construction program. The implementation proposal for those regulations provided that some applicants who filed acceptable loan requests in prior years could proceed with their loan requests provided they were in compliance with the newly published regulations, until the beginning of FY 2000. Therefore, effective this fiscal year, prior year applications will no longer be processed. All loan requests must be submitted under this NOFA.

II. Funding Limits

A. Individual loan requests may not exceed $1 million. This applies to regular section 515 funds and set-aside funds. The Administrator may make an exception to this limit in cases where a State's average total development costs exceed the National average by 50 percent or more.

B. No State may receive more than $2.5 million from regular section 515 funds. Reserve funds, including set-aside funds, are not included in this cap.

III. Rental Assistance (RA)

New construction RA will be held in the National office for use with section 515 Rural Rental Housing loans. RA may be requested by applicants, except for non-RA requests in accordance with section I.D. above.

IV. Application Process

All applications for section 515 new construction funds must be filed with the appropriate Rural Development State office and must meet the requirements of 7 CFR part 1944, subpart E and section V of this NOFA. Incomplete applications will not be reviewed and will be returned to the applicant. No application will be accepted after 5:00 p.m., local time, on the application deadline previously mentioned unless that date and time is extended by a Notice published in the **Federal Register**.

V. Application Submission Requirements

A. Each application shall include all of the information, materials, forms and exhibits required by 7 CFR part 1944, subpart E as well as comply with the provisions of this NOFA. Applicants are encouraged, but not required, to include a checklist and to have their applications indexed and tabbed to facilitate the review process. The Rural Development State office will base its determination of completeness of the application and the eligibility of each applicant on the information provided in the application.

B. Applicants are advised to contact the Rural Development State office serving the place in which they desire to submit an application for the following:

1. Application information;

2. Any restrictions on funding availability (applications that exceed the National limit of $1 million will be returned to the applicant); and

3. List of designated places for which applications for new section 515 facilities may be submitted.

VI. Areas of Special Emphasis or Consideration

A. The selection criteria contained in 7 CFR part 1944, subpart E includes two optional criteria, one set by the National office and one by the State office. This fiscal year, the National office initiative will be used in the selection criteria as follows: In states where RHS has an on-going formal working relationship, agreement, or Memorandum of Understanding (MOU) with the State to provide State resources (State funds, State RA, HOME funds, CDBG funds, or LIHTC) for RHS proposals; or where the State provides preference or points to RHS proposals in awarding these State Resources, 20 points will be provided to loan requests that include such State resources. No State selection criteria will be used this fiscal year.

B. $10,288,987 is available nationwide in a set-aside for eligible nonprofit organizations as defined in 42 U.S.C. 1485(w).

C. $5,716,104 is available nationwide in a set-aside for the 100 most Underserved Counties and Colonias.

D. $9,778,603 is available nationwide in a set-aside for EZ, EC, and REAP communities.

E. $1,500,000 million is available nationwide in a set-aside for States with viable State Rental Assistance (RA) programs. In order to participate, States are to submit specific written information about the State RA program, *i.e.*, a memorandum of understanding, documentation from the provider, etc., to the National office.

Dated: December 10, 1999.

Eileen M. Fitzgerald,

Acting Administrator, Rural Housing Service.

[FR Doc. 99–32959 Filed 12–20–99; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability (NOFA) For Section 533 Housing Preservation Grants

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS) announces that it is soliciting competitive applications under its Housing Preservation Grant (HPG) program. The HPG program is a grant program which provides qualified public agencies, private nonprofit organizations, and other eligible entities grant funds to assist very low- and low-income homeowners repair and rehabilitate their homes in rural areas, and to assist rental property owners and cooperative housing complexes to repair and rehabilitate their units if they agree to make such units available to low- and very low-income persons. This action is taken to comply with Agency regulations found in 7 CFR part 1944, subpart N, which requires the Agency to announce the opening and closing dates for receipt of preapplications for HPG funds from eligible applicants. The intended effect of this Notice is to provide eligible organizations notice of these dates.

DATES: The closing deadline for receipt of all applications in response to this NOFA is 5:00 p.m., local time for each Rural Development State office on March 22, 2000. The application closing deadline is firm as to date and hour. RHS will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX) and postage due applications will not be accepted.

ADDRESSES: Applicants wishing to apply for assistance must contact the Rural Development State office serving the place in which they desire to submit an application to receive further information and copies of the application package. Rural Development will date and time stamp incoming applications to evidence timely receipt, and, upon request, will provide the applicant with a written acknowledgment of receipt. A listing of Rural Development State offices, their addresses, telephone numbers, and person to contact follows:

Note: Telephone numbers listed are not toll-free.

Alabama State Office, Suite 601, Sterling Centre, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3455, TDD (334) 279–3495, James B. Harris

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 745–2176, TDD (907) 745–6494, Ron Abbott

Arizona State Office, Phoenix Corporate Center, 3003 N. Central Ave., Suite 900, Phoenix, AZ 85012–2906, (602) 280–8765, TDD (602) 280–8706, Johnna Vargas

Arkansas State Office, 700 W. Capitol Ave., Rm. 3416, Little Rock, AR 72201–3225, (501) 301–3250, TDD (501) 301–3279, Cathy Jones

California State Office, 430 G Street, Agency 4169, Davis, CA 95616–4169, (530) 792–5819, TDD (530) 792–5848, Millie Manzanedo

Colorado State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, (303) 236–2801 (ext. 122), TDD (303) 236–1590, ''Sam'' Mitchell

Connecticut served by Massachusetts State Office

Delaware & Maryland State Office, 5201 South Dupont Highway, PO Box 400, Camden, DE 19934–9998, (302) 697–4353, TDD (302) 697–4303, Pat Baker

Florida & Virgin Islands State Office, 4440 N.W. 25th Place, PO Box 147010, Gainesville, FL 32614–7010, (352) 338–3465, TDD (352) 338–3499, Joseph P. Fritz

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2164, TDD (706) 546–2034, Wayne Rogers

Guam served by Hawaii State Office

Hawaii, Guam, & Western Pacific Territories State Office, Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8316, TDD (808) 933–8321, Abraham Kubo

Idaho State Office Suite A1, 9173 West Barnes Dr., Boise, ID 83709, (208) 378–5630, TDD (208) 378–5644, Roni Atkins

Illinois State Office, Illini Plaza, Suite 103, 1817 South Neil Street, Champaign, IL 61820, (217) 398–5412 (ext. 256), TDD (217) 398–5396, Barry L. Ramsey

Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100 (ext. 423), TDD (317) 290–3343, John Young

Iowa State Office, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515)284–4493, TDD (515) 284–4858, Bruce McGuire

Kansas State Office, 1200 SW Executive Drive, PO Box 4653, Topeka, KS 66604, (785) 271–2718, TDD (785) 271–2767, Gary Schumaker

Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (606) 224–2500, TDD (606) 224–7422, Paul Higgins

Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7962, TDD (318) 473–7655, Yvonne R. Emerson

Maine State Office, 444 Stillwater Ave., Suite 2, PO Box 405, Bangor, ME 04402–0405, (207) 990–9110, TDD (207) 942–7331, Dale D. Holmes

Maryland served by Delaware State Office

Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street, Amherst, MA 01002, (413) 253–4333, TDD (413) 253–7068, Donald Colburn

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5192, TDD (517) 337–6795, Philip Wolak

Minnesota State Office, 410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7820, TDD (651) 602–3799, Jackie Goodnough

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New Hampshire State Office, Concord Center, Suite 218, Box 317, 10 Ferry Street, Concord, NH 03301–5004, (603) 223–6046, TDD (603) 229–0536, Jim Fowler

New Jersey State Office, Tarnsfield Plaza, Suite 22, 790 Woodland Road, Mt. Holly, NJ 08060, (609) 265–3631, TDD (609) 265–3687, George Hyatt, Jr.

New Mexico State Office, 6200 Jefferson St., NE, Room 255, Albuquerque, NM 87109, (505) 761–4944, TDD (505) 761–4938, Carmen N. Lopez

New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357, Syracuse, NY 13202, (315) 477–6419, TDD (315) 477–6447, George N. Von Pless

North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2062, TDD (919) 873–2003, Eileen Nowlin

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Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 469–5165, TDD (614) 469–5757, Gerald Arnott

Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1070, TDD (405) 742–1007, Phil Reimers

Oregon State Office, 101 SW Main, Suite 1410, Portland, OR 97204–3222, (503) 414–3325, TDD (503) 414–3387, Dan Streng

Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2281, TDD (717) 237–2261, Gary Rothrock

Puerto Rico State Office, New San Juan Office Bldg., Room 501, 159 Carlos E. Chardon Street, Hato Rey, PR 00918–5481, (787) 766–5095 (ext. 254), TDD 1–800–274–1572, Lourdes Colon

Rhode Island served by Massachusetts State Office

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South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW, Huron, SD 57350, (605) 352–1132, TDD (605) 352–1147, Dwight Wullweber

Tennessee State Office, Suite 300, 3322 West End Avenue, Nashville, TN 37203–1084, (615) 783–1300, TDD (615) 783–1397, G. Benson Lasater

Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9755, TDD (254) 742–9712, Eugene G. Pavlat

Utah State Office, Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84147–0350, (801) 524–4324, TDD (801) 524–3309, Robert L. Milianta

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Virgin Islands, served by Florida State Office

Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1582, TDD (804) 287–1753, Carlton Jarratt

Washington State Office, Suite B, 1835 Black Lake Boulevard, SW, Olympia,

WA 98512–5715, (360) 704–7707, TDD (360) 704–7760, Deborah Davis

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Wisconsin State Office, 4949 Kirschiling Court, Stevens Point, WI 54481, (715) 345–7620 (ext. 7145), TDD (715) 345–7614, Sherry Engel

Wyoming State Office, 100 East B, Federal Building, Room 1005, PO Box 820, Casper, WY 82602, (307) 261–6315, TDD (307) 261–6333, Charles Huff

FOR FURTHER INFORMATION CONTACT: For general information, applicants may contact Tracee Lilly, Senior Loan Officer, Multi-Family Housing Processing Division, Rural Housing Service, United States Department of Agriculture, Stop 0781, 1400 Independence Avenue, SW, Washington, DC, 20250, telephone (202) 720–1604 (voice) (this is not a toll free number) or (800) 877–8339 (TDD-Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under Number 10.433, Rural Housing Preservation Grants. This program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V). Applicants are referred to 7 CFR 1944.674 and 1944.676(f), (g), and (h) for specific guidance on these requirements relative to the HPG program.

Application Requirements

7 CFR part 1944, subpart N provides details on what information must be contained in the preapplication package. Entities wishing to apply for assistance should contact the Rural Development State office to receive further information, the State allocation of funds, and copies of the preapplication package. Eligible entities for these competitively awarded grants include state and local governments, nonprofit corporations, Federally recognized Indian Tribes, and consortia of eligible entities.

Funding Information

The funding instrument for the HPG program will be a grant agreement. The term of the grant can vary from 1 to 2 years, depending on available funds and demand. No maximum or minimum grant levels have been established at the National level. You should contact the State office to determine the allocation and the State maximum grant level, if any. For FY 2000, $5,515,344 is available for the Housing Preservation Grant Program. A set aside of $600,000 has been established for grants located in Empowerment Zones, Enterprise Communities, and REAP Zones and $4,365,344 has been distributed under a formula allocation to States pursuant to 7 CFR part 1940, subpart L, ''Methodology and Formulas for Allocation of Loan and Grant Program Funds''. Decisions on funding will be based on preapplications.

December 10, 1999.

Eileen M. Fitzgerald,

Acting Administrator, Rural Housing Service.

[FR Doc. 99–32960 Filed 12–20–99; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability (NOFA) for Section 514 Farm Labor Housing Loans and Section 516 Farm Labor Housing Grants for Off-Farm Housing for Fiscal Year 2000

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Notice.

SUMMARY: This NOFA announces the timeframe to submit applications for section 514 Farm Labor Housing loan funds and section 516 Farm Labor Housing grant funds for new construction of off-farm units for farmworker households. Applications may also include requests for section 521 rental assistance (RA). This document describes the method used to distribute funds, the application process, and submission requirements.

DATES: The closing deadline for receipt of all applications in response to this NOFA is 5:00 p.m., local time for each Rural Development State office on June 19, 2000. The application closing deadline is firm as to date and hour. RHS will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX) and postage due applications will not be accepted.

ADDRESSES: Applicants wishing to apply for assistance must contact the Rural Development State office serving the place in which they desire to locate off-farm labor housing to receive further information and copies of the application package. Rural Development will date and time stamp incoming applications to evidence timely receipt, and, upon request, will provide the applicant with a written acknowledgment of receipt. A listing of Rural Development State offices, their addresses, telephone numbers, and person to contact follows:

Note: Telephone numbers listed are not toll-free.

Alabama State Office, Suite 601, Sterling Center 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3455, TDD (334) 279–3495, James B. Harris

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 745–2176, TDD (907) 745–6494, Ron Abbott

Arizona State Office, Phoenix Corporate Center 3003 N. Central Ave., Suite 900, Phoenix, AZ 85012–2906, (602) 280–8706, TDD (602) 280–8770, Johnna Vargas

Arkansas State Office, 700 W. Capitol Ave., Rm. 3416, Little Rock, AR 72201–3225, (501) 301–3250, TDD (501) 301–3279, Clinton King

California State Office, 430 G Street, Agency 4169, Davis, CA 95616–4169, (530) 792–5819, TDD (530) 792–5848, Millie Manzanedo

Colorado State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, (303) 236–2801 (ext. 124), TDD (303) 236–1590, Mary Summerfield

Connecticut served by Massachusetts State Office

Delaware & Maryland State Office, 5201 South Dupont Highway, PO Box 400, Camden, DE 19934–9998, (302) 697–4353, TDD (302) 697–4303, Pat Baker

Florida & Virgin Islands State Office, 4440 N.W. 25th Place, PO Box 147010, Gainesville, FL 32614–7010, (352) 338–3465, TDD (352) 338–3499, Joseph P. Fritz

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2164, TDD (706) 546–2034, Wayne Rogers

Guam served by Hawaii State Office, Hawaii, Guam, & Western Pacific Territories State Office, Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8316, TDD (808) 933–8321, Abraham Kubo

Idaho State Office, Suite A1, 9173 West Barnes Dr., Boise, ID 83709, (208) 378–5630, TDD (208) 378–5644, Ladonn McElligott

Illinois State Office, Illini Plaza, Suite 103, 1817 South Neil Street,

Champaign, IL 61820, (217) 398–5412 (ext. 256), TDD (217) 398–5396, Barry L. Ramsey
Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100 (ext. 423), TDD (317) 290–3343, John Young
Iowa State Office, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4493, TDD (515) 284–4858, Julie Brown
Kansas State Office, 1200 SW Executive Drive, PO Box 4653, Topeka, KS 661204, (785) 271–2721, TDD (785) 271–2767, Virginia Hammersmith
Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (606) 224–7300, TDD (606) 224–7422, Paul Higgins
Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7962, TDD (318) 473–7655, Yvonne R. Emerson
Maine State Office, 444 Stillwater Ave., Suite 2, PO Box 405, Bangor, ME 04402–0405, (207) 990–9110, TDD (207) 942–7331, Dale D. Holmes
Maryland served by Delaware State Office
Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street, Amherst, MA 01002, (413) 253–4333, TDD (413) 253–7068, Donald Colburn
Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5192, TDD (517) 337–6795, Philip Wolak
Minnesota State Office, 410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7820, TDD (651) 602–3799, Jackie Goodnough
Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4325, TDD (601) 965–5850, Danny Ivy
Missouri State Office, 1201 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0990, TDD (573) 876–9301, Gary Frisch
Montana State Office, Unit 1, Suite B, 900 Technology Blvd., Bozeman, MT 59715, (406) 585–2515, TDD (406) 585–2562, MaryLou Affleck
Nebraska State Office, Federal Building, room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5567, TDD (402) 437–5093, Byron Fischer,
Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222 (ext. 13), TDD (775) 885–0633, William L. Brewer
New Hampshire State Office, Concord Center, Suite 218, Box 317, 10 Ferry Street, Concord, NH 03301–5004, (603) 223–6046, TDD (603) 229–0536, Jim Fowler
New Jersey State Office, Tarnsfield Plaza, Suite 22, 790 Woodland Road, Mt. Holly, NJ 08060, (609) 265–3631, TDD (609) 265–3687, George Hyatt, Jr.
New Mexico State Office, 6200 Jefferson St., NE, Room 255, Albuquerque, NM 87109, (505) 761–4944, TDD (505) 761–4938, Carmen N. Lopez
New York State Office, The Galleries of Syracuse 441 S. Salina Street, Suite 357, Syracuse, NY 13202, (315) 477–6419, TDD (315) 477–6447, George N. Von Pless
North Carolina State Office, 4405 Bland Road, Suite 2120, Raleigh, NC 271209, (919) 873–2062, TDD (919) 873–2003, Eileen Nowlin
North Dakota State Office, Federal Building, Room 208, 220 East Rosser, PO Box 1737, Bismarck, ND 58502, (701) 530–2049, TDD (701) 530–2113, Kathy Lake
Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 255–2401, TDD (614) 255–5757, Gerald Arnott
Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1070, TDD (405) 742–1007, Phil Reimers
Oregon State Office, 101 SW Main, Suite 1410, Portland, OR 97204–3222, (503) 414–3325, TDD (503) 414–3387, Margo Donelin
Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2281, TDD (717) 237–2261, Gary Rothrock
Puerto Rico State Office, New San Juan Office Bldg., Room 501, 159 Carlos E. Chardon Street, Hato Rey, PR 00918–5481, (787) 766–5095 (ext. 254), TDD 1–800–274–1572, Lourdes Colon
Rhode Island, served by Massachusetts State Office
South Carolina State Office, Strom Thurmond Federal Building 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–3432, TDD (803) 765–5697, Larry D. Floyd
South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW, Huron, SD 57350, (605) 352–1132, TDD (605) 352–1147, Dwight Wullweber
Tennessee State Office, Suite 300, 3322 West End Avenue, Nashvile, TN 37203–1084, (615) 783–1300, TDD (615) 783–1397, G. Benson Lasater
Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9755, TDD (254) 742–9712, Eugene G. Pavlat
Utah State Office, Wallace F. Bennett Federal Building 125 S. State Street, Room 4311, Salt Lake City, UT 84147–0350, (801) 524–4324, TDD (801) 524–3309, Robert L. Milianta
Vermont State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6028, TDD (802) 223–6365, Sandra Mercier
Virgin Islands served by Florida State Office
Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1582, TDD (804) 287–1753, Carlton Jarratt
Washington State Office, Suite B, 1835 Black Lake Boulevard, SW, Olympia, WA 98512–5715, (360) 704–7707, TDD (360) 704–7760, Deborah Davis
Western Pacific Territories served by Hawaii State Office
West Virginia State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 291–4793, TDD (304) 284–5941, Sue Snodgrass
Wisconsin State Office, 4949 Kirschiling Court, Stevens Point, WI 54481, (715) 345–7620 (ext. 7145), TDD (715) 345–7614, Sherry Engel
Wyoming State Office, 100 East B, Federal Building, Room 1005, PO Box 820, Casper, WY 82602, (307) 261–6315, TDD (307) 261–6333, Charles Huff

FOR FURTHER INFORMATION CONTACT: For general information, applicants may contact Sue Harris-Green, Deputy Director, Multi-Family Housing Processing Division, Rural Housing Service, United States Department of Agriculture, Stop 0781, 1400 Independence Avenue, SW, Washington, DC, 20250, telephone (202) 720–1604 (voice) (this is not a toll free number) or (800) 877–8339 (TDD–Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

Programs Affected

The Farm Labor Housing Program is listed in the Catalog of Federal Domestic Assistance under Number 10.405, Farm Labor Housing Loans and Grants. Rental Assistance is listed in the Catalog under Number 10.427, Rural Rental Assistance Payments.

Discussion of Notice

I. Authority and Distribution Methodology

A. Authority

The farm labor housing program is authorized by the Housing Act of 1949: section 514 (42 U.S.C. 1484) for loans and section 516 (42 U.S.C. 1486) for grants. Tenant subsidies (rental assistance (RA)) are available through section 521 (42 U.S.C. 1490a). Sections 514 and 516 provide RHS the authority to make loans and grants for financing off-farm housing to broad-based nonprofit organizations, nonprofit organizations of farmworkers, federally

recognized Indian tribes, agencies or political subdivisions of State or local government, and public agencies (such as local housing authorities). In addition, RHS is authorized under section 514 to make loans to finance off-farm housing to limited partnerships in which the general partner is a nonprofit entity.

B. Distribution Methodology

The amounts available for fiscal year (FY) 2000 for off-farm new construction are: Section 514 loans—$20,501,000; Section 516 grants—$9,150,000.

C. Section 514 and section 516 new construction funds

Section 514 new construction loan funds and section 516 new construction grant funds will be distributed to States based on a national competition, as follows:

1. States will accept, review, score, and rank requests in accordance with 7 CFR part 1944, subpart D. The scoring factors are:

(a) The presence and extent of leveraged assistance, including donated land, for the units that will serve program-eligible tenants, calculated as a percentage of the RHS total development cost (TDC). RHS TDC excludes non-RHS eligible costs such as a developer's fee. Leveraged assistance includes, but is not limited to, funds for hard construction costs, Section 8 or other non-RHS tenant subsidies, and state or federal funds. A minimum of ten percent leveraged assistance is required to earn points; however, if the total percentage of leveraged assistance is less than ten percent and the proposal includes donated land, two points will be awarded for the donated land. Points will be awarded in accordance with the following table. (0 to 20 points)

Percentage	Points
75 or more	20
60–74	18
50–59	16
40–49	12
30–39	10
20–29	8
10–19	5
0–9	0
Donated land in proposals with less than ten percent total leveraged assistance	2

(b) Seasonal, temporary, migrant housing. (5 points for up to and including 50 percent of the units; 10 points for 51 percent or more)

(c) For FY 2000, outstanding applications or requests that were issued an AD–622, ''Notice of Preapplication Review Action,'' inviting a formal application, or that had been reviewed and authorized by the National Office prior to October 29, 1998 (63 FR 57932) (the publication date of the proposed rule changing from a first-come, first-served basis to an annual competitive funding cycle). (15 points)

2. States will rank preapplications by point score. For point-score ties within the State, rank order will be determined by giving first preference to the application with the greatest actual percentage of leveraged assistance. In case of further same-State ties, rank order will be determined by lottery.

3. The National office will rank all requests nationwide and distribute funds to States in rank order, within funding and RA limits. If insufficient funds or RA remain for the next ranked proposal, the Agency will select the next ranked proposal that falls within the remaining levels.

II. Funding Limits

A. Individual requests may not exceed $2.5 million (total loan and grant).

B. No State may receive more than 30 percent of the total available funds.

C. New construction RA will be held in the National Office for use with section 514 loans and section 516 grants.

III. Application Process

All applications for sections 514 and 516 new construction funds must be filed with the appropriate Rural Development State office and must meet the requirements of 7 CFR part 1944, subpart D, and section IV of this NOFA. Incomplete applications will not be reviewed and will be returned to the applicant. No application will be accepted after 5:00 p.m., local time, on the application deadline previously mentioned unless that date and time is extended by another Notice published in the **Federal Register**.

IV. Application Submission Requirements

A. Each application shall include all of the information, materials, forms and exhibits required by 7 CFR part 1944, subpart D, as well as comply with the provisions of this NOFA. Applicants are encouraged, but not required, to include a checklist and to have their applications indexed and tabbed to facilitate the review process. The Rural Development State office will base its determination of completeness of the application and the eligibility of each applicant on the information provided in the application.

B. Applicants are advised to contact the Rural Development State office serving the place in which they desire to submit an application for application information.

Dated: December 10, 1999.

Eileen M. Fitzgerald,

Acting Administrator, Rural Housing Service.

[FR Doc. 99–32961 Filed 12–20–99; 8:45 am]

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Tuesday
December 21, 1999

Part V

Environmental Protection Agency

Interim Guidance on the CERCLA Section 101(10)(H) Federally Permitted Release Definition for Certain Air Emissions; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6513–2]

Interim Guidance on the CERCLA Section 101(10)(H) Federally Permitted Release Definition for Certain Air Emissions

ACTION: Notice, request for comments.

SUMMARY: The Environmental Protection Agency (EPA) is seeking comments on its interim guidance on the CERCLA section 101(10)(H) federally permitted release definition for certain air emissions. The interim guidance is published as an Appendix to this notice.

DATES: Submit comments on or before February 22, 2000.

ADDRESSES: Send comments to EPA, CERCLA Federally Permitted Release Definition, Docket Number EC–G–1999–029, Mail Code 2201–A, and mail to: 401 M Street, SW, Washington DC, 20460, or fax to: (202) 501–1011 or email to: docket.oeca@epa.gov. Submitters who want EPA to acknowledge receipt of their comments must mail a self-addressed, stamped envelope.

FOR FURTHER INFORMATION: Visit the OECA Docket Web Site at www.epa.gov/oeca/polguid/enfdock.html or contact the RCRA/UST, Superfund and EPCRA Hotline at 1–800–424–9346 (703–412–9810 in Washington, DC area). For general questions about this guidance, please contact Lynn Beasley at (703) 603–9086 and for enforcement related questions, please contact Cheryl Rose at (202) 564–4136.

SUPPLEMENTARY INFORMATION:

Purpose of this Notice

This notice publishes interim guidance on the federally permitted release exemption to section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9603 and section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. 11004. The guidance responds to specific questions raised by industry groups. It discusses EPA's interpretation of the federally permitted release exemption as it applies to some air emissions.

The notice also solicits public comment on the issues discussed in the interim guidance and EPA intends to conduct a public meeting on the guidance. EPA will revise the guidance if, after reviewing the comments, the Agency believes that the guidance warrants modification.

CERCLA section 103 requires the person in charge of a facility or vessel to immediately notify the National Response Center (NRC) of any release of a hazardous substance in an amount equal to or greater than its reportable quantity. EPCRA section 304 requires the owner or operator of a facility to notify the State Emergency Response Commissions (SERC) and Local Emergency Planning Committees (LEPC) of any release of a CERCLA hazardous substance or an EPCRA designated extremely hazardous substance (EHS) in an amount equal to or greater than its reportable quantity. These statutes, however, do not require notification for a ''federally permitted release'' as defined in CERCLA section 101(10).

The attached guidance discusses the CERCLA section 101(10)(H) notification exemption for certain air emissions. The guidance will assist EPA regional offices, state and local emergency response and other authorities, as well as the regulated community, to determine whether or not a particular release meets that definition. Whether the exemption applies to a particular release often depends upon the language and purposes of a facility's permits and control regulations. EPA recognizes that additional questions may arise regarding the scope of the federally permitted release exemption, and will address those circumstances on a case by case basis. For additional guidance on specific questions regarding whether to report a release, the person in charge, owner or operator should contact EPA's Office of Emergency and Remedial Response (OERR).

The Office of Solid Waste and Emergency Response (OSWER) and the Office of Enforcement and Compliance Assurance (OECA) jointly issue this guidance.

Dated: December 3, 1999.

Timothy Fields, Jr.,

Assistant Administrator for Solid Waste and Emergency Response.

Dated: December 12, 1999.

Sylvia K. Lowrance,

Acting Assistant Administrator for Enforcement and Compliance Assurance.

Appendix—Interim Guidance on the CERCLA Section 101(10)(H) Federally Permitted Release Definition for Certain Air Emissions

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Summary

Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9603, requires the person in charge of a facility or vessel to immediately report any release of a hazardous substance in an amount equal to or greater than its reportable quantity (RQ) to the National Response Center (NRC). Section 304 of the Emergency Planning and Community Right to Know Act (EPCRA), 42 U.S.C. 11004, requires the owner or operator of a facility to immediately notify the State Emergency Response Commissions (SERC) and Local Emergency Planning Committees (LEPC) of any release of a CERCLA hazardous substance or an EPCRA designated extremely hazardous substance (EHS) in an amount equal to or greater than its RQ and provide written followup notice as soon as practicable thereafter.[1] When a release is continuous and stable in quantity and rate, the facility may submit a report on the circumstances of the continuous release that complies with the applicable regulations. For those releases that qualify, continuous release reporting eliminates the burden of having to report each release as it occurs. The immediate and continuous release notifications provide important information for numerous activities. They help government agencies and regulated industries to:

1. Respond to releases;
2. Assess future risks and cumulative effects;
3. Identify chronic problems;
4. Develop pollution prevention and pollution reduction plans; and
5. Educate local communities and the public.

CERCLA and EPCRA, however, do not require notification to the NRC, SERC,

[1] This guidance refers to the CERCLA ''person in charge'' and EPCRA ''owner or operator'' collectively as ''the facility.'' This document does not provide a detailed discussion of the distinctions between the two statutes, such as the different definitions of ''facility'' and reporting exemptions that may apply to one and not the other. Each facility should review the statutes and regulations in order to determine its obligations.

and LEPC of ''federally permitted releases,'' as defined in CERCLA section 101(10). An air emission is a federally permitted release under the CERCLA definition when it is subject to a permit or control regulation that is issued under section 112, section 111, Title I part C or Title I part D of the Clean Air Act (CAA) or under a CAA section 110 State Implementation Plan (SIP), including any schedule or waiver granted, promulgated or approved under these sections.

This guidance document resolves some commonly asked questions regarding the CERCLA federally permitted release exemption as it applies to air emissions. This document does not specifically address every possible application of the definition. A facility should use this document as a general guide to determine whether its individual releases of hazardous substances and EHSs, on a case by case basis, are subject to a CAA permit or control regulation and, therefore, qualify for the CERCLA federally permitted release exemption.

This guidance document explains why a release is generally subject to a permit or control regulation, as defined in CERCLA section 101(10)(H), and therefore exempt from the CERCLA/EPCRA notification requirement when the release is controlled by and in compliance with provisions issued under CAA section 112, including limits and other controls under that section that are technology-based and provisions under that section that control hazardous air pollutants (HAPs) individually or as a class of compounds.

This guidance document also explains why, in the situations discussed herein, a release is generally not subject to a permit or control regulation, as defined in CERCLA section 101(10)(H), and therefore does *not* qualify for the CERCLA federally permitted release exemption when the release is:

1. An unpermitted or unregulated release, including releases from facilities that are exempt from CAA permits or control regulations, such as grandfathered or some minor sources;
2. Caused by an accident or malfunction;
3. Released during start-up or shut-down of a facility and there is no limit or other control on the release of the hazardous substance or EHS during the start up or shut down period;
4. Regulated solely to address volatile organic compound contributions to ozone ambient air quality problems; or
5. Regulated solely to address particulate matter ambient air quality concerns.

In all of these examples, hazardous substances and EHSs are not controlled and may be released directly to the environment without any limits or other control requirements. These uncontrolled releases can involve, for example, highly toxic materials like chromic acid, mercury, methyl isocyanate or 1,3 butadiene, and may occur near sensitive populations, such as elementary schools or senior citizen homes. The law gives emergency response authorities and the public the right to receive information about these hazardous releases so that they can take steps to avoid or minimize exposure, develop responsible emergency response planning and respond to emergencies.

I. Notification Requirements: CERCLA 103/EPCRA 304

CERCLA establishes broad federal authority to respond to releases or threats of releases of hazardous substances from vessels and facilities. In order to alert federal officials of potentially dangerous releases of hazardous substances, CERCLA section 103 requires the facility to immediately notify the National Response Center (NRC) of any release of a hazardous substance in an amount equal to or greater than the reportable quantity (RQ) for that substance. Section 103(a) states, in part, as follows:

> Any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such vessel or facility in quantities equal to or greater than those determined pursuant to Section 9602 of this title, immediately notify the National Response Center....

42 U.S.C. 9603(a).

This notification provides release information to the government so that government personnel can evaluate the need for a response and undertake any necessary action in a timely fashion. CERCLA section 104 authorizes the federal government to respond whenever there is a release or a substantial threat of a release of a hazardous substance.

CERCLA section 101(14) defines the term ''hazardous substance'' by reference to provisions in other environmental statutes that identify substances as hazardous and to CERCLA section 102, which instructs the EPA Administrator to designate additional hazardous substances, as appropriate, when a release of such substances into the environment may present substantial danger to the public health or welfare or the environment. Pursuant to section 102, the Administrator also sets the quantities for hazardous substances that, when released, require reporting. If the Administrator has not established a quantity, section 102(b) provides for a default RQ. A table at 40 CFR section 302.4 lists the CERCLA hazardous substances with their RQs.

The Superfund Amendments and Reauthorization Act of 1986 (SARA) revised and extended the authorities established under CERCLA. Title III of SARA, also known as the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11001 *et seq.*, established new authorities for emergency planning and preparedness, emergency release notification, community right-to-know reporting and toxic chemical release reporting. One purpose of EPCRA is to provide communities and the public with information on potential chemical hazards and to foster state and local planning efforts to control hazardous substance releases.

EPCRA section 304 requires the facility where a hazardous chemical is produced, used or stored to immediately report the release of reportable quantities of CERCLA hazardous substances to state and local emergency planning authorities (*i.e.*, the SERC and LEPC) for each area that the release is likely to affect. In addition, the facility must notify the SERC and LEPC of any release of a reportable quantity of any EPCRA extremely hazardous substance (EHS). These substances are listed in 40 CFR Part 355 Appendices A & B. EPCRA section 304(c) also requires the facility, as soon as practicable after a reportable release, to provide a written followup notice that includes information on the release, response actions, risks and medical advice.

CERCLA section 103(f) establishes an alternative reporting scheme for releases that are continuous and stable in quantity and rate. CERCLA and EPCRA recognize that it is not necessary for the facility to immediately notify the NRC, SERC and LEPC every time such a release occurs in an amount equal to or greater than its RQ. Instead, the facility should report these releases in compliance with EPA's regulations at 40 CFR sections 302.8 and 355.40(a)(2)(iii).

Reporting releases of hazardous substances and EHSs to federal, state, and local emergency planning and response authorities serves several functions. It provides these authorities with important information to respond to the release as quickly as possible in order to minimize the danger to human health and the environment—in particular to that of children, other sensitive populations and sensitive ecosystems. The reports also alert

emergency planning personnel to the potential for future risks so that local communities can work with facilities to minimize harm. Emergency planning agencies also use the reports to assess emergency planning needs, to identify and develop appropriate responses to acute as well as chronic exposure and to assess cumulative effects from many different sources in local areas. These agencies and other local authorities may use this information to develop plans for pollution prevention, pollution reduction, zoning and land use planning. EPCRA also emphasizes that members of the public, including local communities and individuals, have a right to know the types and amounts of releases of hazardous substances and EHSs in their communities.

II. Federally Permitted Release: Controlled and In Compliance

The CERCLA section 103 and EPCRA section 304 notification requirements do not apply to ''federally permitted releases'' of hazardous substances, as defined in CERCLA section 101(10). The CERCLA definition of a federally permitted release is incorporated by reference into EPCRA and, therefore, applies to the notification requirements of both statutes. The CERCLA section 101(10) definition of federally permitted release lists eleven categories of releases that are subject to permits or authorizations under enumerated provisions of specific environmental statutes. With respect to air releases, section 101(10)(H) exempts:

> any emission into the air subject to a permit or control regulation under section 111, section 112, Title I part C, Title I part D, or State implementation plans submitted in accordance with section 110 of the Clean Air Act (and not disapproved by the Administrator of the Environmental Protection Agency), including any schedule or waiver granted, promulgated, or approved under these sections[.]

CERCLA 101(10)(H); 42 U.S.C. 9601(10)(H)(internal citations omitted).

EPA administrative rulings have clarified that a release is a federally permitted release only if it is in compliance with and controlled by one of the CAA provisions identified in CERCLA section 101(10)(H). The EPA Environmental Appeals Board (EAB) concluded that an air emission must be in compliance with a permit limitation in order to qualify for the federally permitted release exemption and that a facility must report a release of a hazardous substance that exceeds a permit limit by the RQ or more.[2] An EPA Administrative Law Judge explained that a release is only a federally permitted release if the regulation imposes an emission limit or otherwise controls the release. The judge concluded that a relief valve discharge was not controlled and, therefore not federally permitted, by a NESHAP regulation that prohibited any discharge from relief valves on equipment in vinyl chloride service except for an emergency relief valve discharge.[3]

Congress did not intend for CAA permit or regulatory provisions to provide a loophole for facilities to avoid notifying the NRC, SERC and LEPC of potentially dangerous releases of hazardous substances. The Senate Report by the Committee on Environment and Public Works that accompanied the 1980 CERCLA bill explained that ''[t]he federally permitted release exceptions are not directed at avoiding notice, but rather to make it clear which provisions of law apply to discharging sources.'' Senate Rep. No. 848, 96th Cong., 2d Sess. 50 (1980).

Congress drafted the federally permitted release exemption to apply only to releases of CERCLA hazardous substances or EPCRA EHSs that are controlled by a CAA permit or regulation. The Senate Report explained, ''Subparagraph (H) of the definition covers several sections of the Clean Air Act, as amended, where they result in the control of air emissions of hazardous substances....Whether control of hazardous substance emissions is achieved directly or indirectly, the means must be specifically designed to limit or eliminate emissions of a designated hazardous pollutant or a criteria pollutant.'' Senate Rep. No. 96–848 at 49.

The Senate Committee Report also explained that ''[w]hile the exemptions from liability for federally permitted releases are provided to give regulated parties clarity in their legal duties and responsibilities, these exemptions are not to operate to create gaps in actions necessary to protect the public or the environment.'' Senate Rep. No. 96–848 at 47. In order to avoid the ''gaps'' in protection of public health and the environment that concerned Congress, the federally permitted release provision exempts only those releases that are subject to emission limits and other controls that are specifically designed to address hazardous impacts from the release of the hazardous substance or EHS at issue.

III. Hazardous Air Pollutant Releases That Are Controlled Under CAA Section 112

Releases of hazardous substances and EHSs that are controlled by and in compliance with a permit or control regulation under CAA section 112 qualify for the CERCLA section 101(10)(H) federally permitted release exemption and do not have to be reported under CERCLA section 103 and EPCRA section 304. CAA section 112 provides authority for EPA, by regulation, to establish National Emission Standards for Hazardous Air Pollutants (NESHAPs). The emission limits and other control provisions in the NESHAPs control releases of hazardous air pollutants (HAPs), as defined in CAA section 112(a)&(b). CAA section 112 also provides some authority, for example in subsections 112(g) and 112(j), to set HAP emission limits on a case by case basis in permits.

Pursuant to CERCLA section 101(14), all HAPs are also CERCLA hazardous substances. A HAP emission is generally a CERCLA/EPCRA federally permitted release if the release is in compliance with all of a NESHAP's limits and other control provisions for the specific HAPs (or groups of HAPs) and methods of release (*i.e.*, the particular emission points) at issue. EPA typically identifies the HAPs and emissions points that each NESHAP provision controls in the NESHAP and/or the preamble to the final rule promulgating the NESHAP. The pre-1990 health-based, as well as post-1990 NESHAP controls that are often technology-based, upon maximum achievable control technology (MACT), are designed to limit or eliminate emissions of HAPs—substances that were listed because of their individual hazardous qualities and impacts. Releases of hazardous substances or EHSs that are controlled by and in compliance with health-based and MACT-based NESHAP limits and other control provisions that are directed at controlling those substances, therefore, qualify for the CERCLA/ EPCRA federally permitted release exemption.

CAA section 112(l) authorizes EPA to delegate to states the authority to implement and enforce the federal NESHAPs. Under section 112(l), EPA may approve state programs to implement and enforce emissions standards and other HAP requirements in place of federal NESHAPs, provided

[2] The EAB's decision, *In re Mobil Oil Corp.,* EPCRA Appeal No. 94–2, 5 EAD 490 (EAB Sept. 29, 1994), is available at the following internet address: http://www.epa.gov/eab/alpha.htm, or by contacting the Clerk of the Board, (202) 501–7060.

[3] The ALJ's decision, *In re Borden Chemicals & Plastics, Co.,* [CERCLA] EPCRA 003–1992 (Order Granting Partial Accelerated Decision Concerning Liability, Feb. 18, 1993), is available by contacting the EPA Hearing Clerk at Headquarters, (202) 260–4865, and is also available through legal research services such as Lexis or Westlaw.

the state requirements are no less stringent than federal requirements. State programs that EPA approves under CAA section 112(l) are federally enforceable pursuant to section 112(l)(7). Releases of CERCLA hazardous substances and EPCRA EHSs that are controlled by and in compliance with these EPA-approved state programs also qualify for the CERCLA and EPCRA federally permitted release exemption.

IV. Hazardous Substance and Extremely Hazardous Substance Releases That Are Not Controlled

A release of a hazardous substance is not subject to a permit or control regulation when the facility does not have a permit or regulation that controls the release at issue. The following provides a few examples of releases that do not qualify for the CERCLA/EPCRA federally permitted release exemption. In these situations, the facility must immediately notify the NRC, SERC and LEPC when it releases a hazardous substance or EHS release in an amount that is equal to or greater than the RQ or file a continuous release report for its releases that are continuous and stable in quantity and rate.

A. Sources That Are Exempt From CAA Regulation

Air emissions of hazardous substances or EHSs that are not subject to a permit or control regulation issued under CAA sections 111, 112, Title I—part C, Title I—part D, or a section 110 SIP are not CERCLA federally permitted releases. A CAA exemption from these CAA provisions does not exempt a facility from its obligation to comply with CERCLA and EPCRA notification requirements. Emissions that are exempt from CAA requirements are not subject to a permit or control regulation, do not qualify for the CERCLA/EPCRA federally permitted release notification exemption, and must comply with CERCLA and EPCRA notification requirements. Pursuant to CERCLA and EPCRA, the facility must notify the NRC, SERC and LEPC of hazardous substance or EHS releases that are exempt from CAA permits or control regulations when the releases are equal to or greater than the applicable RQs, or file a continuous release report for its releases that are continuous and stable in quantity and rate.

Releases that are not subject to CAA permits or control regulations may include emissions from facilities that are exempt from CAA controls because they existed prior to enactment of the CAA requirement, such as unmodified ''grandfathered'' sources, or releases from facilities that are exempt from CAA controls because they emit an annual, cumulative amount of pollution below a stated threshold, such as unpermitted minor sources. The hazardous substance and EHS releases from these facilities are not controlled or limited by, and therefore are not subject to, a permit or control regulation. Without CERCLA and EPCRA notification, emergency response authorities would not learn of potentially dangerous releases that are exempt from CAA requirements.

A facility that is exempt from CAA permits and control regulations could release a dangerous amount of a hazardous substance that requires a federal, state or local emergency response action. Even a very small source could have a release of a hazardous substance that has catastrophic consequences and requires an immediate response. Information about emissions from exempt sources may also be crucial to emergency and pollution prevention planning. It would frustrate the notification purposes of CERCLA and EPCRA to interpret the federally permitted release exemption to authorize these releases without alerting the NRC, SERC and LEPC.

The CERCLA definition of federally permitted release includes releases that are subject to any schedule or waiver granted, promulgated or approved under the CAA sections identified in the definition. The terms ''schedule'' and ''waiver'' have specific meanings under the CAA. CERCLA's reference to CAA schedules and waivers covers only those specific meanings and does not include exempt sources. Under section 111(j)(1) of the CAA, for example, EPA may grant a waiver from a New Source Performance Standard (NSPS) in order to encourage the use of an innovative technological system or systems of continuous emission reduction. If a technology does not result in an emission reduction that equals or exceeds the applicable standard, the regulator will terminate the waiver and establish a schedule for compliance. A release of a hazardous substance or EHS that is controlled by and in compliance with a schedule or waiver issued pursuant to a CAA section listed in CERCLA section 101(10)(H) is a CERCLA/EPCRA federally permitted release, provided the schedule or waiver includes and authorizes a release of that hazardous substance.

B. Accidents and Malfunctions

Unanticipated releases, such as accidents or malfunctions, are the most obvious types of releases that concerned Congress when it enacted CERCLA section 103 and EPCRA section 304. An accident or malfunction can result in an extremely large and/or extremely toxic release. Many accidents or malfunctions require immediate responses, which could include shutting down the facility, evacuating the local population or sealing off the affected area.

A fundamental purpose of CERCLA section 103 and EPCRA section 304 is to ensure that emergency response personnel are immediately alerted of unanticipated releases. Once notified, emergency response experts can assess the dangers from the release and initiate appropriate action to ensure that the harm is minimized, the release is brought under control as quickly as possible and any remaining damage is cleaned up or repaired.

Congress did not intend to exempt unanticipated releases from CERCLA section 103 and EPCRA section 304. As explained in the Senate Report, ''Accidents—whatever their cause—which result in, or can reasonably be expected to result in releases of hazardous pollutants would not be exempt from the requirements and liabilities of this bill. Thus, fires, ruptures, wrecks and the like invoke the response and liability provisions of the bill.'' Senate Rep. No. 96–848 at 48.

Some CAA programs recognize that accidents and malfunctions may happen even when the facility has implemented reasonable measures to avoid them. A release caused by an accident or malfunction, therefore, may not violate the facility's CAA obligations if the facility develops, maintains and is operating in compliance with an accident and malfunction plan. The CAA requires accident and malfunction plans in order to prevent accidental releases, identify accidents and malfunctions when they occur, bring accidental releases under control as quickly as possible and clean up any damage. Accident and malfunction plans, however, do not control unanticipated releases. Even when a facility is in compliance with its accident and malfunction plan, an unanticipated release of hazardous substances or EHSs could result in severe impacts that require immediate response. Unless the facility prevents a release, or until it brings an unanticipated release under control through repairs or other means, the release is uncontrolled and does not qualify for the CERCLA/EPCRA federally permitted release notification exemption. An unanticipated release of a hazardous substance or EHS that is due to an accident, malfunction or otherwise, is not subject to a permit or control regulation and must be reported under CERCLA section 103 and EPCRA

section 304 when the amount of the release is equal to or greater than the applicable RQ.

C. Start-Up and Shut-Down

Start-up and shut-down releases can be large and/or toxic and may cause harm to human health and the environment. It is important for federal, state and local emergency response personnel to have information about uncontrolled emissions during start-up and shut-down periods for analysis of chronic and cumulative impacts, proper planning and emergency response.

Some CAA regulations do not require sources to meet emission limits during start-up and shut-down. A regulation may exempt a release from CAA emission limits or other controls because, for example, it may not be technologically feasible for the source to achieve the requirement during start-up and shut-down.

If a permit or control regulation contains explicit emission limits or other controls on the releases of listed hazardous substances or EHSs during start-up or shut-down, then releases of those substances qualify for the CERCLA/EPCRA federally permitted release notification exemption up to the controlled amount. If, however, a release of a hazardous substance or EHS is exempt from CAA regulation, or is otherwise not subject to emission limits or technology controls during the start-up or shut-down of an operation, then these uncontrolled releases do not qualify for the CERCLA/EPCRA federally permitted release notification exemption and must comply with CERCLA and EPCRA notification requirements.

In many instances, facilities must have a start-up, shut-down and malfunction (SSM) plan that sets forth procedures for operating and maintaining a source during those periods. See, for example, 40 CFR 63.6(e)(3). Even when a facility is in compliance with its SSM plan, it may experience uncontrolled or unanticipated releases of a hazardous substance or EHS that require a response. To the extent that an SSM plan does not incorporate permit or regulation requirements for specific emission limits or other technology controls on the facility's releases of hazardous substances and EHSs during start-up or shut-down, then those releases are not controlled by the SSM plan and must comply with CERCLA and EPCRA notification requirements, even when the uncontrolled releases occur while the facility is operating in accordance with its CAA SSM plan.

D. Volatile Organic Compound/Ozone Controls and Particulate Matter Controls

An independent, unrelated requirement for ozone or particulate matter does not qualify a release of a hazardous substance or EHS for the CERCLA/EPCRA federally permitted release exemption. Limits or other controls on volatile organic compounds (VOCs) as ozone precursors or on small particles as particulate matter (PM) do not exempt hazardous substance and EHS releases from the CERCLA and EPCRA notification provisions. To conclude otherwise would frustrate the purposes of the CERCLA and EPCRA release notification requirements and potentially allow thousands of pounds of highly toxic chemicals to be released—perhaps next to a schoolyard, nursing home or other sensitive population, without any notice to federal, state or local response and emergency planning authorities or to the public. These releases could potentially endanger surrounding populations and have a significant impact on human health and the environment.

Hazardous substances and EHSs have RQs that range from one pound to 5,000 pounds per 24 hour period. The RQ is based upon the intrinsic physical, chemical and toxicological properties of the substance. Facilities must report a release of CERCLA hazardous substances or EPCRA EHSs when the release amount is equal to or greater than the substance's RQ. Emergency response personnel and local emergency planning officials need to have complete and accurate information regarding the releases of these different hazardous substances in order to evaluate the impact on human health and the environment from the release amount.

The manner in which EPA and authorized states regulate VOCs/ozone precursors and PM is inconsistent with the CERCLA and EPCRA notification requirements. The EPA and authorized state ambient air quality programs that regulate VOCs as ozone precursors or that regulate small particles as PM are not designed to control releases of hazardous substances and EHSs and do not address the hazardous impacts that concerned Congress when it enacted the CERCLA and EPCRA release notification requirements. The CAA provisions in CERCLA section 101(10)(H) that control hazardous emissions, and not CAA provisions directed at ozone or particulate ambient air quality, regulate hazardous substances and EHSs consistently with CERCLA and EPCRA.

Congress established separate CAA programs with independent control schemes for the different impacts from emissions of different types of substances. The different CAA programs focus on the particular harms from the substances that they are designed to regulate and impose permit and regulatory limits and other controls to achieve the specific purposes of the individual program. EPA and authorized states control hazardous emissions through NESHAPs or other hazardous emission controls that they issue pursuant to sections 112, 111 or 110 or Title I Parts C or D of the CAA. A release of a hazardous substance or EHS is only exempt from the CERCLA/EPCRA notification requirements when the release is subject to a permit or control regulation under a CAA program that is specifically designed to control the hazardous substance or EHS release. Limits and other controls on VOCs as ozone precursors or on small particles as PM do not control releases for this purpose.

VOCs as Ozone Precursors

Permit provisions and regulations that regulate ozone through VOCs are not directed at controlling releases of hazardous substances and EHSs. These limits are based upon VOC contributions to ozone formation, not upon the toxicity of individual substances. Particularly in areas that have attained the ozone national ambient air quality standard (NAAQS), Ozone-control limits on VOCs may be very large, are often expressed in annual terms, may apply to numerous substances with various toxicity levels and are unrelated to the risks posed by individual hazardous substances. Ozone-control limits on VOCs are typically not designed to control the facility's releases of hazardous substances or EHSs. Specific hazardous releases are often dangerous to human health and the environment in much smaller amounts than general VOC emissions. A facility could have a dangerous peak release of an individual hazardous substance that is consistent with a VOC limit for ozone control, but that may require an immediate response in order to protect human health and the environment.

Formaldehyde, 1,3 butadiene or ethylene oxide, for example, are VOCs that, along with less hazardous VOCs, such as dimethyl ether or ethylene, contribute to ozone formation. Formaldehyde and ethylene oxide, however, are HAPs that are subject to controls under section 112 and other CAA provisions that Congress established within the CAA to control HAPs. EPA controls formaldehyde and ethylene oxide through the HAP programs and not through limits that are

designed to address ambient ozone levels. Unlike general VOC limits, a HAP limit imposes controls on specific substances and often provides a list of hazardous substances and hourly emission limits for each. Hazardous substance and EHS releases qualify for the CERCLA/EPCRA federally permitted releases notification exemption when they are controlled by and in compliance with provisions to control HAP releases. Hazardous substances and EHSs, therefore, are not subject to a permit or control regulation under CERCLA section 101(10)(H), when the facility has a general emission limit or other control for VOCs as ozone precursors in order to address ozone ambient air quality.

Particulate Matter

PM is a designation that identifies particles of a certain size, mass or amount. CAA permits and control regulations for PM address the impacts on human health and the environment from these particles, taking into account the particles' size and mass and the dangers presented by the inhalation of small particles. The EPA program for PM is not designed to address the independent impacts from hazardous substances or EHSs that may be released in small particles. PM permits and control regulations control the emission amounts of small particles of any substance. They typically apply to hazardous and non-hazardous substances alike. Releases of hazardous substances and EHSs are subject to specific CAA provisions that are intended to address these releases.

Chromium, for example, which may be released as small particles, is a HAP that has many severe hazardous effects independent of any impact due to small particle size. Chromium is extremely toxic and may be found in its acid mist form, chromic acid. Some forms of chromium, such as hexavalent chromium, are also considered to be carcinogenic. EPA and authorized states' particulate matter provisions do not control releases of chromium or chromic acid as hazardous substance or EHS releases. These hazardous substances are subject to permits and control regulations that specifically limit or otherwise control chromium releases under the CAA's HAP programs. Releases of hazardous substances or EHSs, therefore, are not subject to a permit or control regulation under CERCLA section 101(10)(H), when the facility has a general emission limit or other control for PM.

V. Continuous Releases

In CERCLA section 103(f)(2), Congress established an alternative notification method for hazardous substance releases that do not qualify for the federally permitted release exemption under CERCLA section 101(10)(H), but that are ''continuous'' and ''stable in quantity and rate.'' The continuous release reporting program provides response authorities with important information regarding the quantity, nature and potential impact of these releases, while reducing the notification burden. Response agencies maintain the immediate and continuous release notification information and use it for emergency planning and cumulative impact analysis.

Continuous release notifications perform, for example, the following important functions: (1) They provide information on releases into the environment that is often not otherwise available to emergency response personnel and the public; (2) they may alert government officials and the public as to when releases are expected to increase; and (3) they help government officials and emergency planning personnel to predict when peak exposures to nearby populations may occur. Local planners may use the continuous release applications to plan outdoor activities in the community; to assist with urban planning decisions, such as where to locate buildings that may house or provide services to sensitive populations (*e.g.,* senior citizen centers, day care centers and schools); and to assess the risk from total emissions in a community.

Facilities who believe a release could qualify as ''continuous'' must:

(1) Make an initial telephone call to the NRC, SERC and LEPC;

(2) Provide an initial written notification describing the release to the EPA Region, SERC and LEPC within 30 days of the telephone call; and

(3) Provide a one-time written follow-up notification to the EPA Region within 30 days of the first anniversary of filing the initial written report.

Thereafter, no further notification is required, unless there is a change in the information submitted or there is a statistically significant increase in the release. If there is a change in the composition or source of a release that did qualify as continuous, the change must be treated as a new release.[4]

The continuous release notification requirements do not impose new, independent emissions limits. They do, however, offer a less burdensome way to report predictable releases while also providing government agencies and local communities with information that may be critical to managing risks and reducing exposure to sensitive populations.

Conclusion

CERCLA section 103 and EPCRA section 304 require facilities to provide important information about hazardous substances and EHSs that are released into the environment to the NRC, SERCs, LEPCs, and indirectly to EPA, the Coast Guard, other agencies and the public. The continuous release reporting option provides a less burdensome method for facilities to notify these federal, state and local authorities of certain hazardous substance and EHS releases.

The federally permitted release exemption to CERCLA 103 and EPCRA 304 notification requirements eliminates the notification requirement, including the continuous release reporting option, for certain air emissions of hazardous substances and EHSs when the release is subject to a permit or control regulation issued pursuant to CAA, sections 112 and 111, Title I part C, Title I part D, or a section 110 SIP. This guidance document discusses the federally permitted release exemption as it would be applied in the specific situations described herein. A brief statement of the guidance's conclusions is set forth in the Summary section, above.

The facility must determine whether its hazardous substance and EHS releases qualify for the notification exemption. In order to overcome the presumption that a release of a hazardous substance or EHS is not federally permitted and that a facility must immediately notify the NRC, SERC and LEPC when the amount of release is equal to or greater than the substance's RQ, the facility must demonstrate that the CERCLA federally permitted release definition exempts the hazardous substance or EHS release from the notification requirements.

This guidance does not impose any new reporting obligations or burdens and does not recommend new forms or reporting mechanisms. CAA permit modifications are not required as a result of this guidance. When a facility's

[4] The above description of the continuous release reporting requirements is a summary of the requirements and is not intended to modify or replace the continuous release regulations. In order to determine whether a release qualifies for continuous release reporting and for instructions on how to comply, use the continuous release reporting regulations at 40 CFR section 302.8 , 40 CFR 355.40(a)(2)(iii) and 55 FR 30,166 (July 24, 1990).

CAA permit or control regulations do not control a release as the release of a particular hazardous substance or EHS, or when the release is not in compliance with such a permit or control, then the facility must comply with CERCLA section 103 and EPCRA section 304 notification requirements.

This guidance is consistent with statements that the Agency has previously made regarding the federally permitted release exemption. EPA issued two Notices of Proposed Rulemaking (NPRMs) and one Supplemental Notice regarding the application of the federally permitted release exemption in CERCLA section 101(10).[5] Subsequent administrative adjudications have provided additional guidance, and EPA has published regulations to explain the reduced reporting option for continuous releases.

When developing this guidance, EPA considered the public comments on air emissions that were submitted in response to the two NPRMs and the Supplemental Notice. Some of those comments are no longer applicable because EPA has already addressed the issues discussed in those comments through administrative adjudications or other Agency statements. EPA also considered its experience in implementing the reporting requirements under CERCLA section 103 and EPCRA section 304 and the success of the CERCLA and EPCRA programs in providing information to communities about releases of hazardous substances and EHSs.

This guidance document provides notice of EPA's interpretation of the CERCLA term ''federally permitted release'' as it applies in the situations described herein. It does not modify, amend or in any way change current law regarding release notification requirements under CERCLA and EPCRA. This guidance document does not impose new legally-binding requirements on EPA, states or the regulated community. EPA may revise this guidance in the future.

EPA intends to apply the interpretations set forth in this guidance in enforcement actions, but retains the discretion to adopt approaches that differ from this guidance when appropriate. When setting priorities to determine whether to pursue an enforcement action, EPA generally considers the potential for significant risks and adverse impacts on human health and the environment, as well as the integrity of the federal program.

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations and regulatory policies that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This interim guidance document does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, nor on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This guidance does not impose any new requirements nor modify existing law. It explains a CERCLA provision that defines an exemption to notification requirements that are imposed by statute. The guidance does not preempt any State or local law, and does not impose any mandate on State and local governments. The requirements of section 6 of the Executive Order, therefore, do not apply to this interim guidance.

[5] Notice of Proposed Rulemaking, 48 FR 23,552 (May 25, 1983); Notice of Proposed Rulemaking, 53 FR 27,268 (July 19, 1988); Supplemental Notice, 54 FR 29,306 (July 12, 1989).

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Part VI

Department of Labor

Office of Labor-Management Standards

29 CFR Part 403

Labor Organization Annual Financial Reports; Final Rule

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 403

RIN 1215–AB29

Labor Organization Annual Financial Reports

AGENCY: Office of Labor-Management Standards, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This final rule makes several minor and technical revisions to the annual financial reporting forms which labor organizations are required to file under the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA). It also makes several technical amendments to the Department of Labor's regulations in which those reporting forms are prescribed. These changes are being made in order to enable the Department to optically scan the reports and make them available on its Internet Web site, and to make the reports more uniform.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Kay H. Oshel, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, Employment Standards Administration, U.S. Department of Labor, Room N–5605, Washington, DC 20210, (202) 693–0123 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 201(b) of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), 29 U.S.C. 431(b), requires that each covered labor organization file an annual report with the Secretary of Labor disclosing its financial condition and operations. The requirements of LMRDA section 201(b) apply to all labor organizations in the private sector. In addition, section 1209(b) of the Postal Reorganization Act, 39 U.S.C. 1209(b), makes the LMRDA applicable to labor organizations which represent employees of the U.S. Postal Service. Finally, the Department's regulations, at 29 CFR 458.3, which implement the provisions of the Civil Service Reform Act of 1978 and the Foreign Service Act of 1980 relating to standards of conduct for federal sector labor organizations, 5 U.S.C. 7120 and 22 U.S.C. 1017, respectively, apply the LMRDA reporting requirements to labor organizations which represent certain employees of the federal government.

Section 208 of the LMRDA authorizes the Secretary to issue, amend, and rescind rules prescribing the form and publication of the information and annual financial reports required by sections 201(a) and 201(b), and to provide simplified reports for labor organizations for whom the Secretary finds that by virtue of their size a detailed report would be unduly burdensome. Part 403 of title 29 of the Code of Federal Regulations contains the regulations implementing these reporting requirements and prescribing the reporting forms. The Secretary of Labor has delegated authority under the LMRDA to the Assistant Secretary for Employment Standards. See Secretary's Order No. 5–96 (62 FR 107, January 2, 1997).

The regulations, at 29 CFR 403.3 and 403.4(a), prescribe Form LM–2 for labor organizations with total annual receipts of $200,000 or more, simplified Form LM–3 for labor organizations with total annual receipts of less than $200,000, and simplified Form LM–4 for labor organizations with total annual receipts of less than $10,000. The regulations at 29 CFR 403.4(b) also provide a simplified reporting format which a parent national or international labor organization may submit on behalf of a subordinate local labor organization which has no assets, liabilities, receipts, or disbursements.

The Department has redesigned Forms LM–2/3/4 so that they can be optically scanned and made available on the Internet. The major changes to the forms are in their appearance. The most important of these changes are (1) the reporting forms are now landscape rather than portrait orientation, (2) they have pre-printed green boxes for entering information for most of the items, and (3) the spaces for entering information are larger and, consequently, the forms have more pages (twelve pages instead of six for Form LM–2, eight pages instead of four for Form LM–3, and two pages instead of one for Form LM–4). In addition, labor organizations will have to file only one copy of the report rather than the two that are now required.

The only change in the content of Forms LM–2/3/4 is that item 3 has been expanded. Currently, labor organizations are asked in item 3 to indicate whether the report is a terminal report. In the revised Forms LM–2 and LM–3, labor organizations are also asked to indicate whether the report is an amended report or a separate report for a subsidiary organization; in the revised Form LM–4, labor organizations are also asked to indicate whether the report is an amended report. This information will facilitate the processing and scanning of the reports.

The changes made in this final rule to Forms LM–2/3/4, prescribed in the regulations at 29 CFR 403.3 and 403.4(a), do not require any change in the text of the regulations.

This final rule also makes several changes to the regulations at 29 CFR 403.4(b). That regulation provides that a parent body may fulfill the reporting obligation of any of its subordinate local labor organizations which have no assets, liabilities, receipts, or disbursements, and which meet certain other conditions. It also sets out a simplified format for the parent body to follow in reporting the required information.

This final rule makes several changes to the information required to be reported by a parent national or international labor organization to fulfill the reporting obligations of its local labor organizations. First, this rule eliminates the requirement to report the location in which the local labor organization is chartered to operate. The requirement to report this information in Forms LM–2/3/4 was eliminated when those forms were revised on December 21, 1993 (58 FR 67594). This change will therefore make the reporting requirement for the simplified format the same as the requirement for Forms LM–2/3/4 with regard to the reporting of charter location.

In addition, this rule eliminates the requirement that the simplified reporting format be submitted in duplicate. This change will also make the report filing requirement uniform with Forms LM–2/3/4.

This rule also eliminates the requirement to report the names and titles of all officers of the local labor organizations for which the parent body files reports under 29 CFR 403.4(b). Only the names and titles of the president and treasurer, or corresponding principal officers, will have to be reported. This will make the simplified format reporting requirement the same as the requirements for Form LM–4 with regard to the reporting of officers.

Finally, this rule changes the regulations so that the information reported by parent national and international unions on behalf of their local labor organizations will have to be submitted on letter-size paper. Forms LM–2/3/4 are letter-size, and the instructions for those forms provide that any attached additional sheets should be letter-size. This change will, therefore, make the simplified format reports the same size as Forms LM–2/3/4, and will facilitate the processing and scanning of the reports.

The changes made by this rule will be effective January 1, 2000. Thus, labor organizations will file the new reporting forms and format for fiscal years beginning on and after January 1, 2000.

Publication in Final

The undersigned has determined that this rulemaking need not be published as a proposed rule, as generally required by the Administrative Procedure Act (APA), 5 U.S.C. 553. This rulemaking makes technical and nonsubstantive amendments to facilitate wider availability of public information, and imposes no additional burden on the public. Consequently, there is good cause for finding that notice and public procedure is unnecessary and contrary to the public interest, pursuant to section 553(b)(B) of the APA.

Effective Date

The undersigned has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication since this rule is technical and nonsubstantive. Therefore, these amendments shall be effective January 1, 2000. See 5 U.S.C. 553(d).

Administrative Requirements

A. Executive Order 12866

The Department of Labor has determined that this rule is not a significant regulatory action as defined in section 3(f) of Executive Order 12866 in that it will not (1) have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities, (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

B. Regulatory Flexibility Act

Because a notice of proposed rulemaking is not required for this rule under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, pertaining to regulatory flexibility analysis do not apply. See 5 U.S.C. 601(2). Therefore, a regulatory flexibility analysis is not required.

C. Paperwork Reduction Act

This rule contains no additional information collection requirements. The information collection requirements in the regulations to which this rule makes technical amendments have been approved by the Office of Management and Budget (OMB control number 1215–0188).

D. Small Business Regulatory Enforcement Fairness Act

The Department has determined that this final rule is not a ''major rule'' requiring prior approval by the Congress and the President pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 804), because it is not likely to result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Further, since the Department has determined, for good cause, that publication of a proposed rule and solicitation of comments on this rule is not necessary, under 5 U.S.C. 808(2), this final rule is effective immediately upon publication as stated previously in this notice.

E. Unfunded Mandates Reform Act

For purposes of section 2 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, as well as Executive Order 12875 (58 FR 58093, October 28, 1993), this rule does not include any federal mandate that may result in increased expenditures by State, local and tribal governments, or increased expenditures by the private sector of more than $100 million.

F. Federalism

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The rule does not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

List of Subjects in 29 CFR Part 403

Labor unions, Reporting and recordkeeping requirements.

Adoption of Amendments of Regulations

In consideration of the foregoing, the Office of Labor-Management Standards, Employment Standards Administration, Department of Labor hereby amends Chapter IV of title 29 of the Code of Federal Regulations as follows.

CHAPTER IV—OFFICE OF LABOR-MANAGEMENT STANDARDS, DEPARTMENT OF LABOR

PART 403—LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS

1. The authority citation for part 403 continues to read as follows:

Authority: Secs. 201, 207, 208, 301, 73 Stat. 524, 529, 530 (29 U.S.C. 431, 437, 438, 461); Secretary's Order No. 5–96 (62 FR 107, January 2, 1997).

2. Section 403.4(b) is revised to read as follows:

§ 403.4 Simplified annual reports for smaller labor organizations.

* * * * *

(b) A local labor organization not in trusteeship, which has no assets, no liabilities, no receipts and no disbursements during the period covered by the annual report of the national organization with which it is affiliated need not file the annual report required by § 403.2 if the following conditions are met:

(1) It is governed by a uniform constitution and bylaws filed on its behalf pursuant to § 402.3(b) of this chapter, and does not have governing rules of its own;

(2) Its members are subject to uniform fees and dues applicable to all members of the local labor organizations for which such simplified reports are submitted;

(3) The national organization with which it is affiliated assumes responsibility for the accuracy of, and submits with its annual report, a separate letter-size sheet for each local labor organization containing the following information with respect to each local organization in the format illustrated below as part of this regulation:

(i) The name and designation number or other identifying information;

(ii) The file number which the Office of Labor-Management Standards has assigned to it;

(iii) The mailing address;

(iv) The beginning and ending date of the reporting period which must be the same as that of the report for the national organization;

(v) The names and titles of the president and treasurer or

corresponding principal officers as of the end of the reporting period;

(4) At least thirty days prior to first submitting simplified annual reports in accordance with this section, the national organization notifies the Office of Labor-Management Standards in writing of its intent to begin submitting simplified annual reports for affiliated local labor organizations;

(5) The national organization files the terminal report required by 29 CFR 403.5(a) on Form LM–3 or LM–4, as may be appropriate, clearly labeled on the form as a terminal report, for any local labor organization which has lost its identity through merger, consolidation, or otherwise if the national organization filed a simplified annual report on behalf of the local labor organization for its last reporting period; and

(6) The national organization with which it is affiliated assumes responsibility for the accuracy of, and submits with its annual report and the simplified annual reports for the affiliated local labor organizations, the following certification properly completed and signed by the president and treasurer of the national organization:

Certification

We, the undersigned, duly authorized officers of [name of national organization], hereby certify that the local labor organizations individually listed on the attached documents come within the purview of 29 CFR 403.4(b) for the reporting period from [beginning date of national organization's fiscal year] through [ending date of national organization's fiscal year], namely:

(1) they are local labor organizations; (2) they are not in trusteeship; (3) they have no assets, liabilities, receipts, or disbursements; (4) they are governed by a uniform constitution and bylaws, and fifty copies of the most recent uniform constitution and bylaws have been filed with the Office of Labor-Management Standards; (5) they have no governing rules of their own; and (6) they are subject to the following uniform schedule of fees and dues: [specify schedule for dues, initiation fees, fees required from transfer members, and work permit fees, as applicable].

Each document attached contains the specific information called for in 29 CFR 403.4(b)(3)(i)–(vi), namely: (i) the local labor organization's name and designation number; (ii) the file number assigned the organization by the Office of Labor-Management Standards; (iii) the local labor organization's mailing address; (iv) the beginning and ending date of the reporting period; (v) the names and titles of the president and treasurer or corresponding principal officers of the local labor organization as of [the ending date of the national organization's fiscal year].

Furthermore, we certify that the terminal reports required by 29 CFR 403.4(b)(5) and 29 CFR 403.5(a) have been filed for any local labor organizations which have lost their identity through merger, consolidation, or otherwise on whose behalf a simplified annual report was filed for the last reporting period.

(Format for Simplified Annual Reporting)

SIMPLIFIED ANNUAL REPORT

Affiliation name: _____

Designation name and number: _____

Unit name: _____

Mailing address: _____

Name of person: _____

Number and street: _____

City, State and zip: _____

File number: _____

Period covered: _____

From Through _____

Names and Titles of president and treasurer or corresponding principal officers _____

For certification see NHQ file folder file number:

President _____
Where signed _____
Date _____
Treasurer _____
Where signed _____
Date _____

Signed in Washington, D.C. this 15th day of December, 1999.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

[FR Doc. 99–33044 Filed 12–20–99; 8:45 am]

BILLING CODE 4510–46–P

federal register

Tuesday
December 21, 1999

Part VII

Department of Health and Human Services

CFR Part 121

Organ Procurement and Transplantation Network; Final Rule Amendment, Stay of Final Rule, and Additional Comment Period; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 121

Organ Procurement and Transplantation Network; Final Rule Amendment, Stay of Final Rule, and Additional Comment Period

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final Rule Amendment, Stay of Final Rule, and Additional Comment Period.

SUMMARY: Section 413 of the Ticket to Work and Work Incentives Improvement Act of 1999, signed into law by the President on December 17, 1999, provides that the Organ Procurement and Transplantation Network (OPTN) Final Rule published on April 2, 1998, together with the amendments published on October 20, 1999, shall not become effective before March 16, 2000. This document announces a stay of the final rule, consistent with section 413, announces that the public may submit comments on the final rule, as amended, for a 60-day period, and amends a compliance deadline in the final rule, as amended.

DATES: Under Section 413 of the Ticket to Work and Work Incentives Improvement Act of 1999 (H.R. 1180, signed into law by the President on December 17, 1999 published on April 2, 1998 (63 FR 16296), as amended by the final rule published on October 20, 1999 (64 FR 56650), is stayed effective December 17, 1999 through March 15, 2000. The amendment to 42 CFR 121.8 is effective on March 16, 2000. To ensure consideration, comments on the final rule as amended must be received by February 22, 2000.

ADDRESSES: Written comments should be submitted to Lynn Rothberg Wegman, Acting Director, Division of Transplantation, Office of Special Programs, HRSA, 5600 Fishers Lane, Room 7C–22, Rockville, Maryland 20857. The comments submitted will be available for public inspection and copying at the address listed above.

FOR FURTHER INFORMATION CONTACT: Lynn Rothberg Wegman, at the address listed above, telephone 301–443–7577.

SUPPLEMENTARY INFORMATION: On April 2, 1998 (63 FR 16296), the Secretary of Health and Human Services published in the **Federal Register** as 42 CFR part 121 a final rule governing the operation of the Organ Procurement and Transplantation Network.

As a result of the enactment of section 4002 of the Fiscal Year 1998 Supplemental Appropriations Act, Public Law 105–174, the comment period was extended until August 31, 1998, and the final rule was not to become effective before October 1, 1998. On July 1, 1998, the Department published a document in the **Federal Register** announcing the extension of the comment period and the delay until October 1, 1998, of the effective date of the final rule. (63 FR 35847.) In addition, several of the dates contained in provisions of the final rule were also amended in the July 1, 1998, document.

On October 21, 1998, Public Law 105–277, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, became effective. Section 101(f) of Division A of the public law enacted the Department of Labor, Heath and Human Services, Education, and Related Agencies Appropriations Act for Fiscal Year 1999. Section 213 of that Act provided that the final rule at 42 CFR part 121 was not to become effective before the expiration of the 1-year period beginning on the date of enactment of that Act. Section 213 also called for the Institute of Medicine to study several aspects of the final rule and of the organ transplant system generally and encouraged the Department to meet with representatives of the OPTN. The Institute's report, issued in July 1999, the public comments received on the April 2, 1998, rule, and extensive consultation with representatives of the OPTN. The Institute's report, issued in July 1999, the public comments received on the April 2, 1998, rule, and extensive consultation with representatives of the OPTN informed the Department's deliberations on possible revisions to the rule. The result was the Department's issuance on October 20, 1999 (64 FR 56650), of amendment sot the final rule, with an effective date for the rule as amended of November 19, 1999.

It is this amended rule that is subject to the provisions of section 413 of the Ticket to Work and Work Incentives Improvement Act of 1999. The rule is not to become effective before March 16, 2000. As provided in section 413(b)W, comments may be submitted for a period ending on February 22, 2000. The Department will consider any revisions that may be appropriate based on our review of the comments.

Section 121.8(e)(2) within part 121, as amended on October 20, 1999, established a compliance deadline of February 15, 2000, for the OPTN to transmit to the Secretary revised policies and supporting documentation for liver allocation. Because we do not seek to have the deadline occur during the period when the regulation is stayed, we have decided to extend the deadline to March 16, 2000.

List of Subjects in 42 CFR Part 121

Health care, Hospitals, Organ transplantation, Reporting and recordkeeping requirements.

Dated: December 16, 1999.

Claude Earl Fox,

Administrator, Health Resources and Services Administration.

Approved: December 17, 1999.

Donna E. Shalala,

Secretary.

Accordingly, 42 CFR Part 121 is amended as follows:

PART 121—ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK

1. The authority citation for part 121 continues to read as follows:

Authority: Sections 215, 371–376 of the Public Health Service Act (42 U.S.C. 216, 273–274d); sections 1102, 1106, 1138 and 1871 of the Social Security Act (42 U.S.C. 1302, 1306, 1320b–8 and 1395hh).

§ 121.8 [Amended]

2. Effective March 16, 2000, in § 121.8, paragraph (e)(2) is amended by revising the words ''February 15, 2000'' to read ''March 16, 2000''.

[FR Doc. 99–33276 Filed 12–20–99; 10:11am]

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federal register

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December 21, 1999

Part VIII

The President

Proclamation 7261—55th Anniversary of the Battle of the Bulge

Proclamation 7262—Wright Brothers Day, 1999

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 7261 of December 16, 1999

55th Anniversary of the Battle of the Bulge

By the President of the United States of America

A Proclamation

By the winter of 1944, the United States and our Allies had turned the tide of the Second World War. Allied forces had liberated the Italian peninsula and were gaining ground in France and the Low Countries. In mid-December, in a desperate attempt to halt this steady advance, Adolf Hitler launched a furious and massive counteroffensive. On December 16, 29 German divisions flooded the Allied line in the Ardennes Forest region of Belgium and Luxembourg. The Battle of the Bulge had begun.

Facing superior enemy numbers, rugged terrain, and bitter weather, the American troops at first fell back. But their determination to defeat the Nazis never wavered. For 6 weeks, U.S. soldiers responded to fierce German offensives with equally determined counterattacks, refusing to succumb to the Nazi onslaught. The siege of Bastogne in Belgium remains an enduring symbol of their indomitable spirit. At that strategic crossroads, a small detachment of the 101st Airborne Division and other attached troops were encircled. When called upon to surrender by the much larger German force, Brigadier General Anthony McAuliffe dismissed the demand with his legendary one-word reply: ''Nuts.'' Against all odds, he and his men held firm during the siege until reinforcements arrived and helped halt the German offensive at a critical point in the Battle.

Inevitably, the spirit, toughness, valor, and resolve of the U.S. forces led to victory. By late January of 1945, the American and Allied counterattack had succeeded in pushing back the Nazi forces, eliminating the threat of further German offensives and ultimately sealing the fate of the Nazi regime. But this victory was costly. At the end of the Battle of the Bulge, some 19,000 Americans lay dead, and thousands more were wounded, captured, or missing in action.

Now, more than half a century later, we still stand in awe of the courage and sacrifice of the more than 600,000 U.S. soldiers and airmen who fought that epic battle. These seemingly ordinary Americans achieved extraordinary things. Leaving their homes, their families, and their civilian lives behind them, they stepped forward to wage a crusade for freedom. They laid the foundations of the peace and security we enjoy today and planted the seeds of democracy that now are bearing fruit throughout Europe. Many of these heroes and patriots have gone to their final rest; but their service, their sacrifice, and their achievements will live forever in the memories and hearts of their fellow Americans.

The Congress by House Joint Resolution 65, has authorized and requested the President to issue a proclamation honoring the veterans of the Battle of the Bulge.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the period of December 16, 1999, to January 25, 2000, as a time to commemorate the 55th anniversary of the Battle of the Bulge. I call upon the people of the United States to express our profound gratitude to the veterans of the Battle of the Bulge and to honor them with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of December, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 99–33277
Filed 12–20–99; 10:59 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7262 of December 16, 1999

Wright Brothers Day, 1999

By the President of the United States of America

A Proclamation

We stand at a rare moment in human history: the end of a century and the birth of a new millennium. The arrival of the 21st century presents all Americans with an opportunity to reflect on where we have been as a Nation and to dream about where we will go in the future. At the dawn of this century, Orville and Wilbur Wright found themselves poised at such a moment. Behind them lay years of painstaking effort and experimentation, trial and failure, in their pursuit of the dream of powered human flight. Ahead of them stretched the sands of Kitty Hawk in North Carolina and yet another attempt to fly in the aircraft they had built by hand. On December 17, 1903, for 12 seconds and 120 feet, they achieved their dream and forever changed the destiny of humankind.

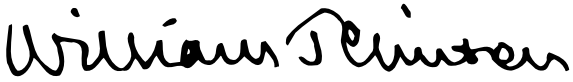
That first brief flight showed that the sky was no longer a limit but a new horizon; it ignited new dreams in our people. Each succeeding generation of Americans, building on the Wright brothers' achievement and fired by the same vision, energy, and determination, has refined the science of flight, increased the range, efficiency, and safety of aircraft, and created a modern air transportation system and aviation industry that have energized our economy and helped transform the world into a truly global community.

And, while they could never have foreseen it, the Wright brothers also brought us to the threshold of space. A scant six decades after that first flight, Americans left the Earth's atmosphere and orbited our planet. By 1969, Neil Armstrong had left the first human footprint on the dusty surface of the Moon. Today's astronauts fly space shuttle missions that are helping us meet the challenge of global climate change, bringing the International Space Station closer to completion, and expanding our knowledge of Earth and the universe. Yet even now the Wright brothers' achievement continues to fire our dreams and beckons us to make new discoveries.

The Congress, by a joint resolution approved December 17, 1963 (77 Stat. 402; 36 U.S.C. 169), has designated December 17 of each year as ''Wright Brothers Day'' and has authorized and requested the President to issue annually a proclamation inviting the people of the United States to observe that day with appropriate ceremonies and activities.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim December 17, 1999, as Wright Brothers Day.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of December, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.



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LIST OF PUBLIC LAWS

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Ticket to Work and Work Incentives Improvement Act of 1999 (Dec. 17, 1999; 113 Stat. 1860)

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